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EQUALITY BEFORE THE LAW

DIWAN CHAMAN LALL

Our Constitution has derived its inspiration from the constitutions as well as the legal and constitutional history of several countries. It has within it the germinating seeds of freedom and equality which it assures to all its citizens.

Not the least among these influences have been the written constitution of the United States of America, the unwritten constitution of Great Britain, the principles that inspired the American and French Revolutions and the steady advance through the ages of the idea of personal liberty and equality before the law which has characterised the great constitutional changes of English history.

Article XIV of the Constitution of the U.S.A. says :

> ".... Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction, the EQUAL PROTECTION OF THE LAWS."

Similarly, Article XIV of our Constitution (and this appears to be a happy coincidence) says :

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

In Part III of our Constitution certain Fundamental Rights are guaranteed to all citizens of India. So sacred are these rights that the State itself is forbidden to take them away. Article 13(2) says :

> "The State shall not make any law which takes away

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or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void".

Those of you who had the great privilege of listening to the memorable speech of Pandit Jawaharlal Nehru in which he moved the adoption of the Objectives Resolution, before the Constituent Assembly met to frame our Constitution, will now readily recognise that it is these great principles of freedom and equality which moved him and inspired the content of our Constitution.

Again, our Constitution in Article 15(1) lays down that :

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them" and goes on to specify such a right in Article 15(2) :

"No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public."

This is as far as the Constitution could particularise, but it laid a further injunction upon the administration under Article 16(1) which says :

"There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

Having dealt with specific matters which have troubled us through many centuries of our history, creating a sense of inequality among many millions of our countrymen—a state of affairs happily now ended constitutionally—Article 19 guarantees personal, individual liberty on an equal basis for all :

"All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;
(d) to move freely throughout the territory of India ;
(e) to reside and settle in any part of the territory of India ;
(f) to acquire, hold and dispose of property; and
(g) to practise any professions or to carry on any occupation, trade or business."

All these rights are equal and unalterable except that the State is empowered to abridge these rights in the interest of security and friendly relations with other states and public order—but naturally no shadow of inequality could possibly darken such abridgement.

This is not the complete story of equality before the law as guaranteed by our Constitution. Under Article 25 it is laid down :

> "Subject to public order, morality and health and to the other provisions of the chapter on Fundamental Rights, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

And in respect of property it is stated in Article 31 that "no person shall be deprived of his property save by authority of law", while all Fundamental Rights are guaranteed by the right to move the Supreme Court by appropriate proceedings for the enforcement of such rights. Whatever aspects of the equality of status or equality of protection under the law human ingenuity could imagine have found some reference or place in the Constitution. For instance, equal pay for equal work is assured. Subject to its capacity the State will provide work, education and public assistance for all unemployed, old, sick, disabled and those undeservedly in want and within ten years the State shall endeavour to secure free and compulsory education for all children up to the age of fourteen. Nor is this aspect of equality confined only to national affairs. Even in the international field, in Article 51 of our Constitution, the State is enjoined to endeavour to promote international peace and security, maintain just and honourable relations between nations,

foster respect for international laws and treaty obligations in the dealings of organised people with one another and encourage the settlement of international disputes by arbitration.

This aspect is important. In recent times as well as in the mediaeval era, inequality among nations was the rule depending upon naval or armed power—not that we have moved far from that unequal concept even now. The earliest attempt to provide a forum for the purpose of settlement by arbitrament instead of by power—that is to say, on equality based on fair dealing instead of inequality arising from disparity of armed strength—was the Amphictyonic Council. Originally, of course, it was merely an organisation for safeguarding the treasures of the Delphian Temples. We have thus attempted to approach the international scene from the same angle as the domestic. We have attempted to import the principle of equality before the law not only for individuals but also for nations.

It will be seen from what I have indicated that rights and status are the two aspects of this principle of equality before the law. Political philosophers have divided rights into absolute and relative—the former pertaining to individuals as unrelated to society and the latter arising from civil and domestic relations. The former include personal security, personal liberty and the right to acquire and enjoy property. These, therefore, are natural, inherent and inalienable and pertain to all equally. Such is the opinion of all important authorities—Blackstone, Bouvier, Wharton and the rest. Certain writ procedure—basically Anglo-Saxon—has been recognised which provides a great and abiding link with the constitutional traditions of the English. In order to enforce all these rights guaranteed in equal measure to all—the writs of *habeas corpus, mandamus, certiorarai,* prohibition and *quo warranto,* etc., have been provided. Not only are equal rights before the law constitutionally guaranteed but their enforcement is assured to all by making universal a procedure of enforcement hitherto limited to certain courts only. It can be said correctly that

this writ procedure is what distinguishes modern jurisprudence from the ancient. But in reference to civil and domestic relations the equality of status is governed, if I may coin a phrase, by the equality of contract. It is a relationship that can be altered by the free will of individuals. But here again, subject to morality and security, the enforcement is common and equal for all. In a famous judgment—The Mogul Steamship Co. *versus* MacGregor (1889) 23 Q.B.D.-598, 614-615, Lord Bowen said :

> "There seems to be no burden or restriction in law upon a trader which arises merely from the fact that he is a trader and which is not equally laid on all other subjects of the Crown. His right to trade freely is a right which the law recognises and encourages but it is one which places him at no special disadvantage as compared with others. No man, whether a trader or not, can, however, justify damaging another in his commercial business by fraud or misrepresentation. Intimidation, obstruction or molestation are forbidden, so is the intentional procurement of a violation of individual rights contractual or other, assuring always that there is no just cause for it."

Hence, equality of rights before the law stipulates also equality of responsibilities to the law. "Law", as Lord Coleridge once remarked, "implies a law-giver and a tribunal capable of enforcing it and coercing its transgressions" —assuring equality before the law not only of rights but also of responsibilities.

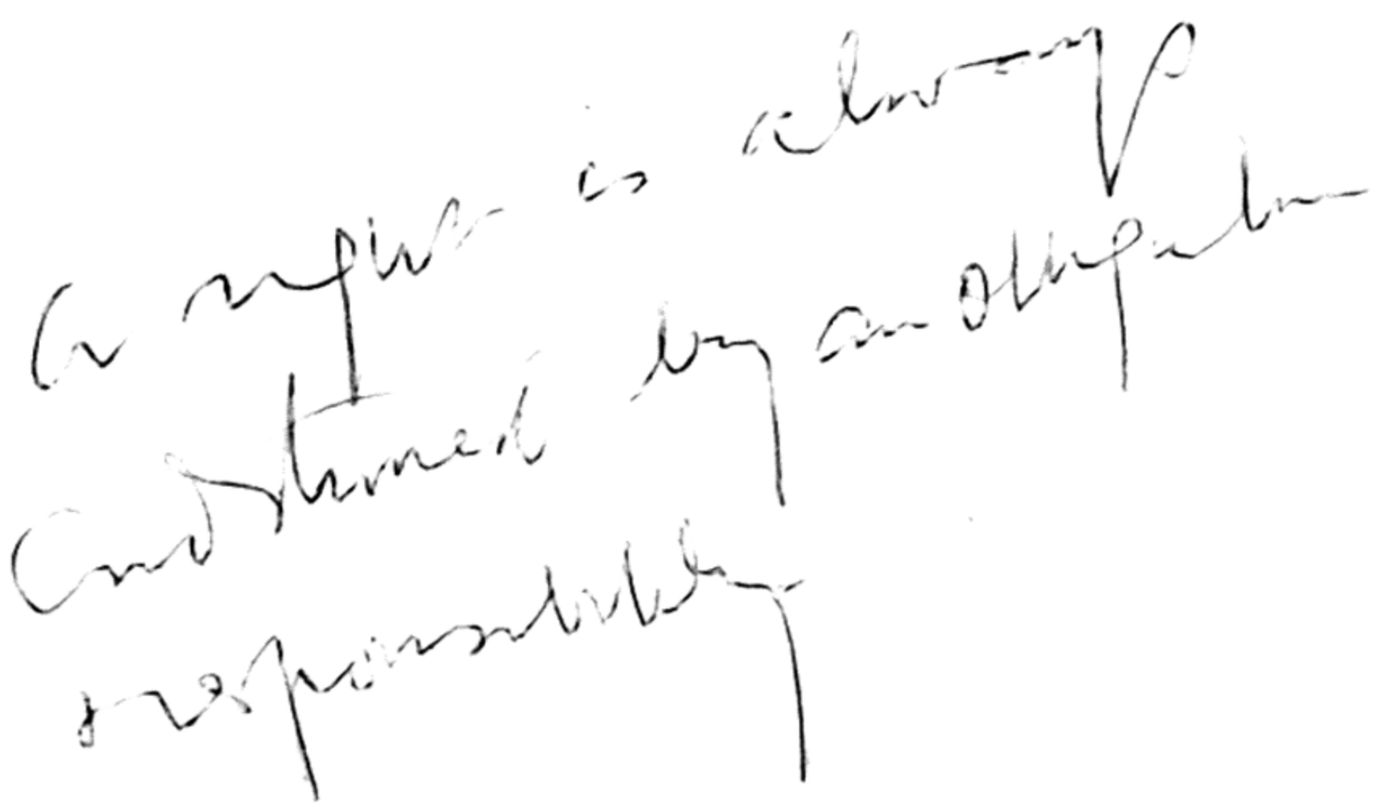
Now, a basic fact must not be forgotten. All laws are relative and all laws are conditioned by the civilisation to which they belong. Hence it was that feudal society prescribed inequality by law even in the matter of dress. It was a punishable crime for certain people to wear clothes of greater value than prescribed. Similarly, right up to modern times, the economic structure of the State resulted in many inequalities recognised by the law, such as the position of Trade Unions and the status of married women, most of it sanctified by the false theory of the freedom of

contract, that is to say, under a prescription of fictional equality and freedom, perpetuating real inequality and, in some cases, slavery. New social legislation put an end to this fiction. The original idea of the freedom of contract came to be abridged by the enactment of social legislation—National Health Insurance, Minimum Wage Legislation and so forth—putting an end to many an inequality before the law. Thus, in order to ensure equality and put an end to social injustice there came about a partial return from contract to status. This brings me to a comment on the great work done by Sir Henry Maine whose comparative studies in Hindu and Roman Law led him to draw a distinction between static and progressive societies and their legal evolution. Static societies started with the law of personal command, (obviously there could be no question of equality here) issuing under divine inspiration (for instance, the Themistes in Homeric poems) leading to a crystallisation of habits into custom. Custom became a source of law and it stratified society into unequal layers. This era was followed by the formulation of Codes such as Solon's Attic Code or the Twelve Tables of Rome. Most human societies never got beyond this. Progressive societies, however, moved by legal fiction, by rules of equity and by legislation—tending always to put an end, progressively, to inequality before the law. For instance, the system of adoption in Roman Law came by this method of legal fiction. Both in Roman and in Hindu Law, fictions played their part to develop law, keeping it in step with the developments of the realities of social life.

But, apart from this, the metaphysical aspect (referred to by Del Vecchio) was held responsible for the idea of justice in human beings. It boils down to this that there has always been a conflict between the 'haves' and the 'have nots', disguised by our philosophers as a conflict between the legal ideal and the social reality, until it compelled Radbruch in his *Rechtsphilosophie* to remark that "at the beginning there was legal philosophy and at the end revolution". Thus, the urge for equality which is the urge for

justice has continued, through the centuries, to change the aspect of law in its relation to the individual and in its relation to property—assuring gradually an elimination of the unequal status through revolt and revolution, through fiction and custom, through legislation, interpretation and legal judgment. It is, however, not so much the jural postulate which changed the law enabling men to claim more equality under it as the social purpose whether in the mind of the legislator, or the law giver, or the politician or the statesman working under the stress of social change. This sociological concept of development advanced by the French jurist, Geny, has an important bearing on the understanding of the evolutionary process. The evolution of the individual is the basis of modern society. This concept was fully developed as far back as Stoic philosophy. It is there in Athenian Democracy. It is there in Locke. It is there in the French Declaration of the Rights of Man, in the American Constitution and in our own. Its basis is the integrity of life, liberty and individual rights and equality before the law. The essential factor governing this equality is that it is controlled but it is a control which ensures and enlarges the liberty, not one which constricts it and kills it. The very realisation of the Right to Equality would become impossible without the provision of social conditions which make such realisation possible. Through this analysis we have come to what Dicey called the Rule of Law—the absolute supremacy of law as opposed to arbitrary interference by Government. This the Constitution has assured and guaranteed. It means equal subjection of all classes to the ordinary law of the land. It means that the Constitution is not the source but the consequence of the rights of individuals to equality defined and enforced by the law courts. We must not forget, however, that as long as economic inequalities exist there can be no absolute certainty of achieving the guaranteed equality before the law but that, having reached the most advanced stage of a progressive society in this matter, time alone can complete the evolutionary process. Although the Romans recognised equality in law, they drew a distinction

between Jus Gentium (Law of the Nations) and Jus Naturale. The latter recognised absolute equality but the former recognised slavery. Aristotle postulated equal treatment of those equal before the law and allowed the State to define those who were equal before the law. But the modern conception of Democracy, which insures equality before the law for all, dates from the American and French Revolutions until it found its finest exposition in the Indian Constitution which I have tried to analyse for you. However, there is no such thing as absolute equality, *i.e.*, there is no equality which is not conditioned. A right is always conditioned by an obligation, a responsibility. Equality thus is qualified, as Thomas Paine and the Declaration of 1789 have emphasised. It is this that Man, throughout human history, has endeavoured to secure against the forces of power and privilege and political and economic inequality. These have given way before the relentless march of Democracy under the banner of human equality not only in law but in life as well.



THE RIGHT OF SELF-DEFENCE

V. L. ETHIRAJ

The right of self-defence or private defence, as it is called, is an important and substantive personal right enacted by statute in India and it is necessary for every person to know and learn about it.

It is the law of self-help when aid cannot be obtained from outside against imminent aggression. The law sanctions to every individual, within reasonable limits, acts which are necessary to protect his or her interests against any offence affecting the human body or property, movable or immovable, of himself or herself or of any other person under certain circumstances. The right of self-defence extends to protection against acts committed even by a child or by any person, under intoxication or of unsound mind or devoid of maturity and understanding. An act done in the exercise of the right of self-defence is no offence under the law.

Historically, self-help is recognised in most countries. The ancient lawgiver of India, Manu, has said : "The twice-born may take arms, when their duty is obstructed by force; and when, in some evil time, a disaster has befallen the twice-born classes". "And in their own defence, and in a war for just causes and in defence of a woman or a priest, he who kills commits no crime". The law of England is somewhat similar even though the right of self-defence was originally limited in that country to persons who were situated in a sort of community of interest like husband and wife,

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February 3, 1954.

parent and child, master and servant, companion or neighbour, etc.

Scope of Law Wider in India

In India, the laws relating to offences under the Criminal Law are codified in the Indian Penal Code of 1860. The law of self-defence is conferred in the Code, subject to certain limitations. Yet, in an important respect, the scope of law in India is wider than in England. The law in India gives the right of self-defence to a person who goes to the help of any other person in defence of that person's right to resist aggression against person or property. The framers of the Code drew their inspiration from the laws of England and largerly embodied them in the Code, when they recognised the special conditions of this country at the time when they found that the rule of law was not firmly established and the people were subjected to a certain insecurity of person and property. They said that they were, therefore, anxious "to rouse and encourage a manly spirit among the people than to multiply restrictions on the right of self-defence".

The right of self-defence is an individual right and like other individual rights, the extent and limits of the right can be gathered only from the administration of the law and the interpretation given by the courts of law on the written words of the Code. The authors of the Indian Penal Code recognised that the right will always be the least exact part of every system of Criminal Law, though they had given anxious thought to it. It will be my endeavour, therefore, in the course of this talk to take you through various aspects of this right in its application to person and property and to show how they are interpreted by the courts of law.

The right of private defence of the body extends to the voluntary causing of death or any other harm to the assailant, if the assault is of such a nature as would cause apprehension of death or grievous hurt, or amounts to the offence of rape, kidnapping or wrongful confinement.

There are some restrictions on the exercise of the right of private defence. If there is time to have recourse to the protection and assistance of public authorities, the law does not allow you to exercise the right. Another exception is that the right in no case extends to the inflicting of more harm than is necessary to inflict for the purpose of the defence. For instance, when death is caused as a reasonable exercise of private defence, it is no offence at all. But, where death is caused in a measure and manner not commensurate with the needs of self-defence in a given case, *i.e.*, where the right of private defence is exceeded, then the accused would be guilty of culpable homicide, and not murder.

Public Servants Excepted

There is, however, an important exception to this right and that is, when a public servant or someone under his direction and known to the party as such, acting in good faith and under colour of office, does or attempts to do an act, though that act "may not be strictly justifiable by law", so long as that act or attempt does not reasonably cause the apprehension of death or grievous hurt. Many cases have arisen before the courts as to what acts of public servants are protected by this provision and they have held that certain illegal acts of public servants are not protected when they are acting, for example, under illegal warrants or making illegal searches or arrests. This provision in the Penal Code is for protecting public servants, and is slightly at variance with English Law. In English Law a public servant is not protected for any act of oppression or any illegal act committed in the execution of his duty, from corrupt or other improper motives, except when he acts from ignorance or mistake.

The right of self-defence begins only when there arises an apprehension of danger. The danger need not actually happen. If the apprehension is real and reasonable, it makes no difference if the apprehension is mistaken. In a leading

case it has been held that where a son killed his father in the mistaken belief that he was about to murder his mother, he rightly exercised his right of self-defence. But, if, for instance, a man killed another in the absurd belief that he was a wizard, the law does not protect him, as his belief was not reasonable. It is also necessary that the danger must be imminent and must exist at the time the right of private defence is exercised. In no case revenge must be mistaken for self-defence.

Some Case Laws

Cases have arisen frequently before the courts as to whether the right of private defence was exercised properly and reasonably. In a Madras case, where an accused's house was surrounded by a hostile mob who threatened to roughly handle him, he shut himself and fired seven gunshots in self-defence killing three people and grievously injuring six others. The High Court, in upholding the plea of self-defence, observed that the view that a person should run away in the face of danger and avoid it would be placing a greater restriction on the right than the law required. "A calm and cool calculation as to the extent of the right is not possible in a moment of great danger". Again, the exercise of the right would depend not on the actual danger, but as to whether there was reasonable apprehension of such danger. These things could not be weighed in golden scales and the right should be considered broadly in the light of apprehension of danger.

In a recent Madras case the High Court found that when the accused who were armed were attacked in revenge for an aggression caused by them earlier in the day, they rightly exercised their right of private defence in repelling the attack and causing death to three of the assailants and injuries to three others, adopting the well known principle, *viz.*,

> "A man who is assaulted is not bound to modulate his defence step by step according to the attack, before

there is reason to believe the attack is over. He is entitled to secure his victory as long as the contest is continued. He is not obliged to retreat but may pursue his adversary till he finds himself out of danger, and if in a conflict between them, he happens to kill, such killing is justifiable. And, of course, where the assault has once assumed a dangerous form, every allowance should be made for one who, with the instinct of self-preservation sprung upon him, pursues his defence a little further than to a perfectly cool by-stander would seem absolutely necessary. The question in such cases will be, not whether there was an actually continuing danger but whether there was a reasonable apprehension of danger".

Similar views were expressed by the Supreme Court of India in another recent case where a Sindhi mob attacked two Mohammedan shops and the accused in one of them fired two shots in defence of his family and property and killed a Sindhi and injured others. Their lordships held that the right of private defence was rightly exercised and the measure of the exercise of the right should be considered broadly in the context of actual and apprehended danger and ought not to be weighed in too fine a set of scales.

Defence of Property

A right to the defence of property is provided in certain cases. In the case of theft the right of self-defence continues till the offender has effected his retreat with the property or the assistance of the public authorities is obtained or until the property is recovered. In cases of robbery, house-breaking by night, mischief by fire or theft, mischief or house trespass as may reasonably cause apprehension that death or grievous hurt will be the consequence, the right of private defence extends to the inflicting of death or grievous hurt on the offender. In these circumstances, the offences committed or attempted to be committed are against both person and property and the law gives full latitude

to the right of private defence. Interesting questions as to the extent of the right necessary in defence of property have come up before the courts and the courts have held that where these offences are accompanied by violence or threats of violence, the right is extended. In the case of house-trespass especially, the courts have found that, in exercising the right of private defence, the person affected may not effect any retreat, as it has been held, that a man's house is his castle and he has no need to surrender it in the face of unjustifiable intrusion.

Right Restricted to Certain Offences

I will now explain to you the limits prescribed by law for the right of self-defence. First of all, the right is restricted to certain offences. There is no right of self-defence where there is time and facility to have recourse to the assistance of the public authorities who may be called in to deal with the situation. There can be no right of private defence where the act is premeditated. The right of self-defence can arise only in cases where danger suddenly overtakes one. Even the proximity of a police station will not deny the right, if mischief or risk of it will overtake a person before State help is obtained. The question of the excess of the right of private defence or the existence of the right is a question of fact in every case before the courts and the person claiming the right has to establish that fact to the satisfaction of the court, as the burden of proof under the law is cast on the person pleading the right. Nevertheless, the right is one in which the courts have given a large and liberal interpretation, and as I have told you already, it is not one which should be weighed in golden scales in the case of actual or threatened danger.

In fact, courts have gone so far in construing this right that, even if any accused denies the occurrence and pleads an alibi, it is open to them, on the evidence and other circumstances, to come to the conclusion that the accused acted in self-defence. Thus, it is not absolutely necessary

for the accused to plead specifically the right of private defence.

I cannot conclude this talk better than by quoting from a famous English writer :

"The right of self-defence is absolutely necessary. The vigilance of magistrates can never make up for the vigilance of each individual in his behalf. The fear of the law can never restrain bad men so effectually as the fear of the sum total of individual resistance. Take away this right and you become in so doing the accomplice of all bad men".

"The law does not require a citizen, however law-abiding, to behave like a rank coward on every occasion. The right of self-defence, as defined by law, must be fostered in the citizens of every free country".

THE LAW OF LIBEL

P. M. LAD

He who seeks to explain law to laymen must of necessity relate it closely to life. No branch of law touches life at so many points as does the law of libel. Libel is as ancient as speech itself, and today it is winged on the most modern means of mass communication. The realm of libel is as wide as words can conquer. Libel goes deep into those regions of the sub-conscious mind where vanity and envy hold their sway. As A. P. Herbert, who is known for a layman's independent interest in libel law, puts it, "Most of us utter actionable slanders every day; and few of us know it — a solemn thought."

Libel and slander are wrongs to man's reputation. All societies, be they primitive or civilised, are forced in the interest of their well-being to take notice of these wrongs. Primitive societies punish them for preventing breaches of peace, for nothing is more potently disruptive of peace than disparaging words. Civilised societies protect the reputation of man because they respect his dignity and personality. Reputation has vital value for personality, for without it social association itself is impossible. An injury to reputation can do more irreparable harm to a man's personality than even assault on his person or theft of his property. Shakespeare rightly wrote :

"Good name in men and women, dear my lord,
Is the immediate jewel of their soul :

February 10, 1954.

Who steals my purse steals trash; 'tis something
nothing . . .
But he that filches from me my good name . .
Makes me poor indeed."

The *Bhagavadgita* expresses the same sentiment more tersely but forcefully when it says,

—"for a man of honour defamation is worse than death".

Democratic societies which value the dignity of the individual as an end in itself are, therefore, jealous of their citizens' reputations and are zealous in guarding them against unjustified attacks. In doing so they necessarily abridge the freedom of speech which they otherwise value as the very breath of their life. The development of the law of libel in modern societies represents the changing interplay of these two fundamental articles of democratic faith — the dignity and personality of the individual and the freedom of speech, not only as a basic human right but as an indispensable instrument of social good. Thus viewed, the law of libel becomes an exception to the fundamental right of free speech. That is the setting in which the Indian Constitution places it. The Constitution permits reasonable restrictions on the freedom of speech and expression in relation to defamation. How far these restrictions should go depends on that delicate balancing of basic freedoms which a sensitive public opinion ever seeks to adjust in a democratic society.

A very significant example of this interaction was recently provided in England when reformers sought to assimilate the written and the spoken word in the law of defamation. In opposing this reform, the late Lord Simon, himself an embodiment of the balanced wisdom of English Law, pointed out that in framing statutory provisions about the law of defamation, we have to choose the sensible way between two principles, each of which is greatly to be admired but both of which run into some conflict. The noble and learned Viscount went on to say :

"On the one hand, it is extremely important that

> we should have a law which enables people who are damaged by slanderous and untrue statements to have some protection and remedy from the courts. But there is another principle commonly known as the principle of free speech. We live in a community in which there is carried on a good deal of verbal horseplay, a good deal sometimes prejudiced, sometimes exaggerated, but which, none the less, ought not to be strictly restrained, because, if it were, we should lose a most priceless element in our society. It is better for us to accept the fact that people may say what they like; but there are cases where what they proclaim of third parties does so much damage that the law must provide some remedy to prevent it."

Although, the English law of libel which courts substantially administer in this country has been aptly described as a chapter of accidents, these accidents were not altogether unrelated to the trends of social and political growth. Despite its overgrowth of illogicalities one can still trace the main path of reason; and more and more, as in the recent Defamation Act of 1952, that path is being diverted to the shrine of democracy. The absolute rights of the personality of an individual are made to yield to the paramount claims of free discussion for the discovery and spread of truth.

This philosophy of the Common Law of libel must now be illustrated by the details of its practical working. Defamation is an invasion of an individual's interest in reputation and good name. Libel and slander are two different kinds of the wrong of defamation. Many legal systems regard libel merely as more serious than slander; but the common law, which is now followed in the Anglo-American jurisdictions, is peculiar in clinging to two separate bodies of rules for what it regards even as distinct wrongs. Under that law, libel and slander give rise to different causes of action and have even been judicially described as being of different genus. When defamation takes some permanent and visible form as in writing, it is called libel. and it becomes slander when it is made in spoken words

or in some fugitive form. It is possible to group the forms of defamation round this broad classification. Written and spoken words are only the elementary instances of each type. Libel can also take the attractive form of pictures, cartoons, and effigies. A very curious instance of a visible representation was that of the publication of a photograph which by an optical illusion gave the appearance of the plaintiff being guilty of indecent exposure. Slander can be conveyed by looks, signs or gestures. One can—

"Convey slander in a frown;
And wink a reputation down."

A person can be defamed by acts no less than by visible or audible representations. Thus, it has been held libellous to burn a man's effigy, to place his effigy in wax among those of murderers, to dishonour a cheque so as to import insolvency, dishonesty or bad faith in the drawer of the cheque. Broadcasting had presented a problem in this classification, and that problem has now been satisfactorily solved in English Law by the Defamation Act of 1952 which for the purposes of the law of libel and slander treats broadcasting of words by means of wireless telegraphy as publication in permanent form. That enactment has also provided a very comprehensive definition which can perhaps cover every possible variety of libel and slander. It adopts the simple device of interpretation by providing that any reference in this Act to words shall be construed as including a reference to pictures, visible images, gestures and other methods of signifying meaning. Defamation by libel and slander can thus be as diverse as methods which human ingenuity can devise for signifying meaning injurious to reputation.

The definition adopted by the Indian Penal Code naturally bears the traces of libel as a crime. That definition does not, however, maintain the artificial distinction of the Common Law between libel and slander. The distinction between slander which is actionable in itself and which is actionable on proof of identifiable pecuniary loss described in law as special damage has not also

been followed in India for purposes of civil liability. I need not, therefore, dwell upon the learning connected with this part of the law of libel. Suffice it to say that the theory of slander being actionable *per se* is that the tendency of such slander to injure the plaintiff's reputation is so manifest that the law does not require evidence of its having actually injured such reputation.

A defamation by libel or slander being thus a wrong to reputation must be distinguished at the outset from a mere insult which is a wrong to man's sense of honour. Reputation is the opinion formed of a man by others, whereas, honour or dignity is the opinion which he holds of himself. The distinction, as the modern German Law expresses it, is between subjective and objective honour. This distinction had been accepted by Hindu Law and also by Roman Law and its derivative systems such as Italian Law. The wrong of defamation consists in adversely affecting a man's reputation. It may be so affected by exposing him to hatred, ridicule or contempt for something for which he is morally responsible, or it may even tend to make him shunned and avoided for something of which he has been a victim for no fault of his own. The most compendious test is whether he has been lowered in the estimation of right-thinking members of the society generally by the words or means adopted by the libeller or slanderer. Do they tend to diminish the esteem in which he is held or excite adverse feelings or opinions against him? Thus, to attribute insanity to a man or to represent of a woman that she had been ravished, as in the famous Youssoupoff case, would amount to defamation, although these may be misfortunes and reflect no moral discredit on the person concerned; the result would inevitably be that the defamed individual will thus tend to be separated from associations in the society in which he moves and will thereby suffer grievous damage.

Certain implications follow from the character of defamation as a wrong to reputation. So long as harm results to reputation, it is naturally a matter of indifference

to the aggrieved party whether the defamer intended to cause that harm. Thus, unintentional defamation becomes actionable, and the rule of strict liability attaches to the tort of defamation. In this the Common Law differs from the Roman Law, but the difference represents the respect which is paid in a democracy to the personality of man. The law today thinks more of the harm actually suffered and is not impressed by any consideration of the actor's intentions. It places libellous or scandalous words in the same category as escape of fire or of dangerous animals. This is, curiously enough, echoed by an old Sanskrit poet who spoke of calumny as if it were the poison of a rabid dog spreading contamination wherever it goes. A person who uses words does so at his own peril. He may affect the reputation of a man unknown to him by reason of circumstances of which he was not cognisant. His words may be intended for one person but may equally fit another. These consequences of strict liability as worked out in modern English Law tended to prove a terror to writers. Authors would soon have come to believe with George Moore that it would be desirable to refer to the characters in fiction by numbers rather than by names. After prolonged agitation, the British Parliament changed the law in the interest of freedom of discussion especially in the Press. The tendency is to substitute the standard of reasonable care in the place of the rigid requirements of strict liability.

Since we are concerned only with reputation, it follows that the offending words must be communicated to a person other than the person defamed. For, reputation can suffer only when other persons become aware of the imputation. This is what the law means by publication. A person will be held responsible for publication if he puts the imputation on its way to others so that in the natural course, others would know it even though he did not intend them to know. A very sensible exception to this rule, however, is that of communication by a husband to his wife. That the law does not treat it as publication, because in law they are one, at least in this respect. In practice a wife is a natural listener

for a man who intends to publish his neighbour's shame.

The reputation with which the law is primarily concerned is that of a living person, for, the cause of action in damages naturally dies with the person. That is why the defamation of the dead is not actionable unless it is also intended to defame the living. For a similar reason of not being able to ascertain the damage to any individual or group, defamations are not made actionable in tort. The law, however, recognises that the reputation of a corporation or an association of individuals may suffer pecuniary loss by defamation. In these and in other respects the law of criminal libel, which is primarily the law with which the Indian Penal Code has made us familiar, differs from the law of libel as a tort.

A man cannot claim a reputation better than what he has. He cannot be permitted to recover damages in respect of injury to a character which he either does not or ought not to possess and, therefore, the truth of the imputation, known in law as justification, is a complete defence to an action for libel. As Pollock explains, it is not that uttering truth always carries its own justification, but that the law bars the other party of redress which he does not deserve. To publish the truth concerning a man is not, therefore, actionable in damages. This may lead to the undesirable result of exposing to public gaze, details of private life which have long been buried and forgotten. The French Law is more sensible in that it erects a wall around a person's private life, and does not permit truth as a defence except in matters concerning officials and persons in public positions for, in their case, the truth ought to be known in the public interest. The freedom of discussing truth is, however, so highly prized now that the Common Law has departed from the well-known maxim which prompted Robert Burns to say :

"Dost not know that old Mansfield,
Who writes like the Bible,
Says the more 'tis a truth, sir,
The more 'tis a libel ?"

The Criminal Law, however, still adheres to the old Sanskrit injunction that one should not speak unpleasant truths, and the Indian Penal Code, therefore, requires that true imputation can be made about a person only if it be for the public good which of course is a question of fact.

The other exceptions which can be successfully pleaded in an action for libel are all made in the interest of freedom of discussion. There is first that group of privileged immunity which is intended for enabling public duties to be discharged without fear, by persons whose duty it is to engage in such discussions. The right of free speech is, in this respect, allowed to prevail wholly over the right of reputation. This rule of law is founded on public policy which requires that a judge or a Member of Parliament in dealing with the matters before him shall do so with his mind uninfluenced by the fear of an action for defamation or a prosecution for libel. Whatever is necessary for the dispensation of justice in an independent atmosphere is permitted not only to judges but to parties, advocates and witnesses. Naturally, this immunity carries with it the responsibility on the part of judges and legislators to restrain themselves and others in their presence from making wanton attacks on reputation and it is of some interest to find that the rules made by the Speaker of our House of the People now include a special provision that the Speaker may at any time prohibit any Member from making a defamatory allegation if he is of the opinion that such allegation is derogatory to the dignity of the House or that no public interest is served by making such allegation.

This absolute privilege is not available to the publication of reports of judicial or parliamentary proceedings for all purposes. Only a qualified privilege is permitted in that behalf and also to that class of cases in which "the middle course is taken between the common rule of unqualified responsibility of one's statements and the exceptional rules which give absolute protection." Pollock put the rule of qualified privilege pithily in the following terms : "In many

relations of life the law deems it politic and necessary to protect the honest expression of opinion concerning the character and merits of persons to the extent appropriate to the nature of the occasion but does not deem it necessary to prevent the person affected from showing, if he can, that an unfavourable opinion expressed concerning him is not honest. Occasions of this kind are said to be privileged and communications made in pursuance of the duty or right incident to them are said to be privileged by the occasion." It follows, therefore, that the privilege is destroyed by proof of malice in the sense of ill-will.

Finally, we come to the well-known exception of fair comment which is invoked to justify literary and political criticisms. Nothing can be a libel which is a fair comment on a subject fairly open to public discussion. Pollock has rightly pointed out that this is a rule of common right, not a case of cause of action with an excuse, but of no cause of action at all. Whoever fills a public position renders himself open to discussion. He must accept an attack as a necessary, though unpleasant, appendage to his office. Whoever submits his book or work of art to public approval cannot complain if disapproval is expressed even in the strongest terms. It is impossible to fix a standard of fair criticism. So long as the facts on which opinions are expressed are substantially correct, and the opinion itself is honest and free from malice, a very wide latitude in language is permitted. Authors like Charles Reade or painters like Whistler were made to realise this principle of law by juries who awarded damages to them of few cents or of one farthing.

This rule preserves for democracy that right of freely discussing the affairs and conduct of men in public life who fill offices and aspire for offices. There was a time when scandalising them (*scandalum magnatum*) was punished severely as an offence. The Star Chamber treated libels, both upon officials and private persons, as crimes. Stephen has pointed out that the view which the law takes of the offence of public seditious libels will depend upon the view

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held as to the relation of rulers to their subjects. The ruler may be regarded as superior to the subject, or the ruler may be regarded as his agent and servant. It is this later principle which has gradually influenced the law of political and seditious libels. That principle is trying to assert itself in this country with the advent of our new democracy. One can confidently say that, in course of time, this branch of law of libel will settle down to a reasonable adjustment of sober and yet effective political criticism.

This, in outline, is the law of libel. In an ideal society there should be no place for that law. For, that society will be permeated by a sense of oneness where everyone will keenly feel the wrong to another as if it were done to himself. Nothing breaks that oneness and separates man from man so much as calumnious words, and that is why Indian culture has repeatedly insisted that one should not speak evil of others. But as the prince of cynics the poet Bharthrihari inquired : "Where are those great men who by magnifying the merits of others proclaim their own?"

THE LAWS OF PROPERTY

JINDRA LAL

We all know what the word "law" means, but few of us are aware of the implications of the word "property" in legal language.

In its narrower sense, property means merely corporeal property, that is, the concrete thing which is the subject of ownership and over which a person can have and exercise rights. In this sense, for instance, a chair, a book, a house, a tree, lands, etc., are all property.

In its wider sense, however, property includes the rights that a person has over a thing. These rights are of various kinds and the Property Laws relate how these rights come into existence and how and up to what extent they can be enjoyed and the methods by which they can be transferred to others.

Our Constitution has guaranteed to every citizen the right to acquire, to hold and to dispose of property. It has further guaranteed that no one can be deprived of his property save by authority of Law. Further, any law under which property can be taken away or acquired by the State must be for a public purpose and must make provision for compensation to the person from whom the property is taken. The Supreme Court has recently held that this compensation must be just and adequate and the State cannot take away property without giving adequate or just and fair return.

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Of course, the State has a right in certain cases to destroy property if it is dangerous to life, or public health, or other property. For instance, in order to prevent fire from spreading to other property, a house or other property may be destroyed.

Various Enactments

Now, the law relating to various rights in property in India is contained in different enactments as well as in the personal law of the people, that is, the Hindu and Mohammedan Laws and the Customary Law applicable to certain communities. Broadly speaking, law relating to sales, mortgages, leases of immovable property, gifts, exchanges and assignments of actionable claims are codified in the Transfer of Property Act of 1882. The law relating to sale of goods is found in the Sale of Goods Act of 1930, and the law relating to negotiable instruments like *hundies*, cheques, and pro-notes, is contained in the Negotiable Instruments Act.

When purchasing immovable property like land, houses, etc., it is very important to ascertain if the seller has the title which he claims to have. Tracing of title to immovable property is often a difficult and complicated matter and it is advisable and always safer to go to a competent lawyer for this purpose. It is the duty of the seller to make out a good marketable title and for this purpose he must produce before the purchaser all documents on which he bases his own title. The purchaser must carefully scrutinize these documents and carefully note any defect which might throw a cloud on the title of the seller.

Having traced the title, the next step is to find out if the property intended to be conveyed is encumbered in any way. For this purpose the purchaser must examine and scrutinize the indices and registers kept by the Registrar or the Sub-Registrar of the District in which the property is situated.

Then the next step is that a draft of the sale deed is

prepared by the purchaser and is submitted for the approval and acceptance of the seller. The deed should contain all the conditions and covenants by which the parties agree to bind themselves.

Implied Terms

In the absence of express conditions certain terms are implied in the sale of immovable property. The seller, for instance, is bound to disclose to the buyer any material defect in the property or in his title thereof of which the seller is, but the buyer is not, aware and which the buyer could not with ordinary diligence discover. The buyer is also bound to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware but of which he has reasons to believe that the seller is not aware and which fact materially increases the value of such interest.

Of course, in every contract for sale and in every sale of immovable property the seller is deemed to covenant that he has power to transfer the interest which he professes to transfer.

One may, of course, have interest in property less than ownership. One instance of such a right is a lease. A lease of immovable property is a transfer of the enjoyment of such property for a certain period or in perpetuity, in consideration of a price paid or promised to be paid, in the form of money, a share in crops, service or any other thing of value to be rendered either periodically or on specified occasions by the tenant to the landlord.

In the case of a lease also, the lessee must satisfy himself that his lessor has the right to grant to him the interest that is intended to be granted.

In the absence of agreed terms to the contrary, certain terms are implied in a tenancy. For instance, a lessor is bound to disclose to a lessee any material defect in the property, with reference to its intended use, of which the lessor is, but the lessee is not, aware and which defect could not

be ordinarily discovered by the lessee. The lessor is also bound on the request of the lessee to put the latter in possession of the property and guarantee that the lessee will continue to hold the property during the period of the lease. But the lessee must keep on paying the rent and performing other terms of the lease. The lessee, that is, the tenant, is entitled to cancel the lease if the material part of the property is wholly destroyed by fire, army, mob etc. and without the fault of the lessee. The lessee is also entitled to make repairs to the property if the lessor refuses to do so after a reasonable notice has been given to him. In such a case he can charge the expenses thus incurred to the lessor. Under the Transfer of Property Act a tenant may mortgage or sub-lease the whole or any part of his interest in the property, but the State Legislatures have nullified the effect of this law by the Rent Restriction Act with the result that in most States the lessee cannot transfer his interest without the written consent of the lessor. It is obvious that the lessee must use the property in a reasonable manner having regard to the object of the tenancy. There are other conditions implied in a lease which it is not necessary to mention here.

Mortgage of Property

Another interest in immovable property, which can be created, is a mortgage. This has been defined as a transfer of interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan or an existing or future debt or for the purpose of an agreement which may give rise to a pecuniary liability. Mortgages are of various kinds and they are defined in the Transfer of Property Act. The basic principle of mortgages is that if money is advanced on a proper mortgage of immovable property, anybody who subsequently acquires any interest in such property does so only subject to the mortgage. The mortgagee can proceed to

enforce the rights against the property in spite of the subsequent transfers.

Compulsorily Registrable Instruments

It is important to note that certain interests can be created only by an instrument in writing and that certain instruments are compulsorily registrable, otherwise they cannot be received in evidence so as to affect the property. For example :—

(1) Documents which make gifts of immovable property ;

(2) Documents which purport to operate, to create, declare or assign, limit or extinguish in present or in future a right, title or interest of the value of Rs. 100 and above, to or in immovable property ;

(3) Any document which acknowledges the receipt or payment of any consideration on account of the creation, declaration, assignment, or limitation, or extinguishment of any such right, title or interest; and lastly

(4) Leases from year to year or for more than a year.

There are other documents which must be registered but I have stated only a few of them.

Coming, now, to the sale and purchase of movable property, I have already stated that the law relating thereto is contained mainly in the Sale of Goods Act. This Act defines goods as every kind of movable property other than actionable claim and money, and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. In purchasing and selling goods, it is always advisable to carefully agree on the terms by which the parties wish to be bound and to reduce them to writing. In the absence of agreed terms, however, the Sale of Goods Act contains terms which will be read into every sale of goods.

Basic Principle of Sale

The basic principle is that goods remain at the seller's risk unless the property in them has passed to the purchaser. In the absence of an express contract between the parties, the Sale of Goods Act lays down certain principles. For instance, if there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods will pass to the purchaser as soon as the contract is made. This is irrespective of the fact whether the price of the goods has been paid or the goods are to be delivered at a later date. Supposing, for instance, you purchase a piece of furniture. Your purchase is complete although you are to pay for it at a later date and although the furniture remains with the seller to be delivered to you later on. If the furniture is destroyed by fire without any fault of the seller, the loss will be yours. Now, suppose the furniture has been approved by you but the seller is to do something to it before it is brought into a deliverable state. If the furniture is destroyed before it is brought into a deliverable state the loss will be of the seller, but if the furniture has been brought into a deliverable state and you have been notified of that fact, the loss will be yours. Again, suppose someone contracts to sell you a certain quantity of liquor out of a big cask containing a much larger quantity. The property in the liquor sold to you will pass to you only after the required quantity has been measured and bottled and set aside, that is to say, when the goods are unconditionally appropriated to the contract.

Now let me tell you what happens when goods are sent to you on approval or on sale or return. Naturally, if you approve of the goods you will buy them, but if you do not approve they should be returned. When does the property in the goods pass to you ? The principle is that property will pass to you on your signifying your approval that you have accepted the goods or if you do not signify your approval, then on your failure to signify the same within the time fixed or within a reasonable time. If the goods are

sent to you on approval and you do not wish to keep them, take care to send them back or at least to notify the seller that you do not want them. Do this within a reasonable time, otherwise, if the goods are destroyed or damaged, you will be responsible.

Ownership of Goods Essential

It is the basic principle of the laws of property that no one can give what he has not got. A person who deals with the goods of another without this other's consent or authority cannot bind him to such a transaction. This has been the strict rule of Common Law and is the basis of the law in India. The reason, of course, is obvious for no one can go and sell my goods without my consent or authority and if I find someone in possession of my goods, I am entitled to get them back. It will be no answer to me that the other person purchased the goods from somebody else. Of course, in such a case, I have to prove my title to the goods and to show that no one had any authority, express or implied, to sell them. It will then be left for the other person to try and establish his right to the possession of the goods. I cannot, of course, stand aside and allow a third party to be deceived and cheated into believing that the goods being sold to him are being sold validly. If I conduct myself in such a way that a third party is induced to believe or is likely to believe that the person selling is passing a good title, I cannot later challenge the sale because of my own conduct. This can happen in many ways. Section 30 of the Sale of Goods Act provides, for instance, that if a person who having already sold goods to another person continues in possession or is in possession of those goods or the documents of title to those goods, he can pass a good title by another sale to another person by delivery of the goods and documents of title. The previous purchaser cannot recover the goods or document of title from the new purchaser because the new purchaser can turn round and say, "Well, I purchased the goods from a person

who was in valid possession and there was nothing to put me on my guard. I honestly believed that the goods belonged to the seller and therefore I have a good title. You can go and get your damages from the person who sold the goods to me, but as far as I am concerned I have a good title." Well, his contention would be correct.

The same Section of the Sale of Goods Act also provides that where a person, having bought or agreed to buy goods, obtains possession of the goods or documents of title to those goods with the consent of the seller then the purchaser can himself sell those goods or documents of title to a third party although he may himself have not acquired title to such goods. Again, a mercantile agent, acting in the ordinary course of business of a mercantile agent, who has, with the consent of the owner, possession of goods or the documents of title to such goods, may pass a good title to the buyer who buys in good faith and without notice of want of title. This, of course, is necessary, otherwise all commercial transactions would come to an end.

You will have noticed that in all cases mentioned above the person selling was in possession of the goods or documents of title with the consent or connivance of the true owner. A person in possession of goods, fraudulently or without express or implied consent of the owner, is not capable of passing any title in it.

LAND LAWS

C. K. DAPHTARY

Since our country attained independence, there has been a spate of legislation, that is, the making of laws applicable to the whole country and the making of laws applicable to each State independently. This is the manifestation of the hithertofore pent up desire of the people to achieve economic, social and cultural betterment. Of these laws, the most important and significant are the land laws, a comprehensive term which includes measures providing for the re-distribution of land, the re-organisation of agricultural holdings, the conditions of tenancy, the improvement and augmentation of food-crops, and a diversity of other rules and regulations affecting the land and its tillers.

Abolition of Landlordism

This talk will be restricted to that group of revolutionary measures which aims at the abolition of "Landlordism" and so at bringing about the disappearance of a class of land-holdings which persisted in the country's agricutural economy for over a century in spite of vehement and continuous protests and criticism and in spite of the realisation by our erstwhile rulers themselves of its vicious and pauperising effects on the peasants and which was the principal obstruction to progress. The removal of political considerations which supported the maintenance of the system and the

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advent of democratic Government has opened the door to immediate remedial measures.

Almost every State of the Union has passed a law to initiate this revolution in rural India. Though these laws are variously styled and though the machinery devised is not uniform, yet they are all variations of a single scheme. The basis and object of each is the elimination of the middleman between the tiller of the soil and the State—the absentee landlord or rent farmer whose only interest was in the money, and not in the lot of the cultivator.

In order that the scope and effect of this legislation may be understood, it is necessary to bear in mind the conditions which existed earlier. India is and has always been essentially and predominantly an agricultural country. Well over 65 per cent of the population is agriculturist.

From ancient times, the State has levied a tribute on the agriculturist whether in cash or in kind and accordingly there has always existed a machinery for its collection. It was found by the East India Company, when it came on the scene, to be more convenient not to collect directly, but to depute the collection to a rent farmer or collector, who would be responsible to the Company for payment, with a certain proportion of the income to be retained by him as remuneration. With the extension of British rule over the whole country, the same system in its fundamentals was adopted everywhere with such variations as the history and circumstances of a particular province or district demanded.

Rent Collector Turned Owner

Theoretically, the cultivator was the tenant or owner and paid a fixed sum every year which was liable to periodical revision. But in practice, the middleman exacted far more than he was entitled to do, the State being more or less indifferent so long as the stipulated sum was received by it from the intermediary. In course of time, the rent or revenue collector set himself up as the owner of the land with heritable and transferable rights, and hence

came to be known as a *zamindar*. The position and the rights which he so appropriated to himself gradually came to be legally recognised, because it suited the then rulers to permit the setting up of such a class as a political bulwark between them and the people.

This change in position was facilitated by the permanent settlement of revenue assessment in various States and even where, as in the important province of Uttar Pradesh, the enforcement of the permanent settlement was halted, the position was no better. The failure of the system was due entirely to the fact that the *zamindar* was concerned only with recovering the maximum possible revenue by legal or illegal means and was not prepared to plough any of the income back into the soil. His ownership was divorced from work, while the peasants' work was divorced from ownership. The landlord like all men cared only to reap where he had never sown.

It is obvious that under such a system the peasant became virtually a slave with neither security of tenure nor fixity of rent. This deplorable state of affairs, ultimately ruinous to the State itself, cried for reform and its abolition was the main plank in the independence movement. The opposition was justified not merely on economic grounds but on the more fundamental ground that the middleman's interest could not be justified when it served no useful social purpose. Indeed, it stood in the way of economic progress. The large amounts which the *zamindar* appropriated to himself could, if received by the State, be readily applied to improving the status of the peasant.

The main object of the new deal is, therefore, to eliminate a useless class and establish direct contact between the peasant and the State. The various Acts provide for the compulsory vesting, from a particular date, of the interests of the intermediaries in the State. There are, necessarily, rules for payment of compensation to those whose interests have been so acquired on different bases, either at a uniform rate, that is to say, at a fixed multiple of the net assets, estimated as laid down, or on a graded scale as in West

Bengal, sliding from twenty times the net annual income for the first Rs. 500 to twice only for the excess over Rs. 80,000.

Question of Compensation

The question of compensation has been a controversial one, and while one extreme school of thought would pay no compensation at all, the vested interests claimed that it should be an exact equivalent of what was lost to them. The latter was clearly not only impossible but undeserved. Even on the reduced and, as has been sometimes alleged, illusory scales of payment, in Uttar Pradesh alone the total compensation payable will considerably exceed 150 crores of rupees, only a small proportion of which can be expected to come back from what the tenants will pay for proprietorship under the scheme of the Uttar Pradesh Act.

It may as well be pointed out here that every intermediary is not necessarily rich or powerful or the holder of thousands of acres. For instance, in Uttar Pradesh there were about two million so-called "*zamindars*", of whom only a fraction paid land revenue of over Rs. 5,000, whereas an overwhelming proportion paid an insignificant annual sum. For these so-called "*zamindars*" the compensation has been made payable on a sliding scale, awarding a higher multiple (20 times) of net assets to the smallest and the least (one) multiple to the highest, whose assets do not exceed Rs. 10,000.

The *zamindar* is generally allowed to retain such land up to a varying maximum as he himself was personally cultivating, so becoming a tenant of the State on prescribed terms. He can also retain his homestead, orchards, workshops and other specified property. Having eliminated the intervening sharer or owner, the next step, as embodied in the Acts, is to simplify and rationalise the variety of tenant tenures—which in some States and particularly in Uttar Pradesh, have assumed amazing and bewildering proportions, too complex even for the well-informed. Thus,

again referring to Uttar Pradesh as an example, the kinds of holding have been reduced to four, two major and two minor.

The Basic Scheme

The basic scheme is to enable each kind of the minor tenants to acquire higher rights by lapse of time and on payment of a certain sum, so that ultimately there may be a widespread class of owner-cultivators paying only assessment to the Government. The prospect of attainment of that independent status is an encouragement to hard work and economy. The new scheme of things ensures the cultivator enjoying the fruits of his labour in tranquillity, without the constant fear of being ejected from his holding on some pretext or the other. Thus, for example, in Uttar Pradesh a class of cultivators, termed Adhivasis under the Act, who had no stable rights, are entitled to hold their land for five years from the date of the Act and on the expiry of the period to acquire Bhumidhari or fixed landholding rights directly under the Government on payment of a price and thereafter paying assessment to Government and not rent to a landlord, the *zamindar*, whom he thus supplants, being paid equitable compensation. The expectation is that this lesser class of tillers will eventually disappear.

The disposal of the superior owner or intermediary, as the case may be, though an essential step in the uplift of the cultivator, is only one of the moves necessary for attaining a complete reform of agrarian economy. The second step already provided for, wholly or partly, in the existing legislation, is the reduction in the variety of tenancies and sub-tenancies and other derived holdings, so that in place of a chain of right holders which might, as in Bengal, have been seventy or more, only two or three classes of holders will henceforth remain. The disparity between what the *zamindar* paid to the Government and the economic or rather the highest exactable revenue was in some places so great as to allow a series of sharers in the money return, so that the poverty stricken peasant sustained a hierarchy of parasites.

Inasmuch as the duty of collecting rent or assessment directly from him now falls on Government, it was essential for that reason alone, if no other, to simplify the scheme of holdings.

The next step was and is to ensure that no one man has more than a certain maximum of land, the intention being that every man shall have what he can personally cultivate. The maximum has naturally varied in different States, due to different conditions. It is difficult, if at all possible, to say what is an economic holding, for all purposes and all places. A large holding of a certain kind of land or growing a particular crop will not necessarily be more profitable than a smaller holding of a different crop or in a different place. A large holding may be a greater burden. Certain laws have, however, specified maximum areas with the highest at 50 acres. Correspondingly, it is essential to aim at a minimum economic area, too. In most States, by reason of division and sub-division, many a peasant-tilled plots amounted to only a fraction of an acre.

Causes of Fragmentation of Economic Holdings

One of the causes of fragmentation of initially economic properties has been the nature of the laws of inheritance which made a large number of descendants eligible, for sharing what devolved. In Malabar, for instance, persons other than the sons were included among the inheritors. Thus, tenants with heritable rights contributed in successive generations to sub-division upon sub-division and so to the creation of splinter holdings which produced only a fraction of what the holder had to pay. This evil has yet to be tackled but an approach has been made in the U.P. by the Zamindari Abolition Act and in Madhya Bharat where a limited order of descent has been imposed so as to restrict the number of heirs and thus the number of divisions on devolution.

It is obvious that the problem of prevention of excessive division is one which is of the utmost difficulty, the solution

of which necessarily involves interference with traditional ideas, and time honoured rights. But these must necessarily yield sooner or later, if the initial measures of reform are to culminate in a stable and prosperous economy. And here one may mention another species of laws, not common as yet to all States, but in the devising of which Bombay State has taken the initiative by a measure known as the Prevention of Fragmentation and Consolidation of Holdings Act. One part of this deals with the problem converse to that of prevention of fragmentation, that is to say, it seeks to eliminate dwarf holdings by consolidating them. All holdings below a minimum will be classed as fragments and so entered in the records. Such fragments will not be allowed to be transferred or leased except when the effect will be to amalgamate with adjoining holdings. Holdings cannot be sold, even under legal process, so as to leave a fragment. The Act further provides for the initiation of a scheme to consolidate fragments compulsorily.

Much Remains to be Done

Some of the legislation that I have mentioned is more comprehensive, some less; the latter no doubt to be supplemented, after watching the results of certain tentative measures. But even though much has been achieved much remains to be done in order to extract the maximum benefit to the nation and to the individual. Methods of assessment of revenue have to be revised, co-operative or joint farming extended and encouraged, finance provided for the farmer and his produce properly marketed.

The necessity for some of these items is immediately apparent. If there are to be, for a considerable time, very small holdings and even if at the best of times any one holding cannot exceed a particular acreage, farming will be more economic and advantageous if resources can be pooled, and the produce collectively marketed. Thus, co-operative farming is bound to be increasingly encouraged and, if necessary legislated for. Equally, since the cultivator can

no longer look to his *zamindar* to finance his operations—which was done on exorbitant and ruinous terms, the State must erect machinery for the purpose. Thirdly, since the pressure on land is increasing with the increase in population, more and more of the population will have to be diverted to other occupations such as small industries. All this opens up a vast field of endeavour and legislation for ends to be gradually but consistently achieved to complete what has been called a bloodless revolution.

THE DEBTOR AND THE CREDITOR

D. N. MITRA

The human species, it has been said, is composed of two distinct races : the men who borrow and the men who lend. Of these two, infinite superiority has been claimed for the race of borrowers, but though this is not accepted by law or society, it is conceded that the race of borrowers is not necessarily a race of wasters. The borrower has come to his own, however, comparatively recently. It was not so long ago, that both in India and in England, a defaulting debtor was imprisoned in much the same manner as a criminal. Going further back, we find that in Sanskrit, the creditor is called "Uttamarna" and the debtor is called "Adhamarna": the good boy and the bad boy in the economic structure of ancient Hindu society. The position is reversed, now that the great man, *Mahajan,* has become an object of suspicion in the eye of the law and very often an object of execration for the Indian peasant.

The reason, for this revision of values, is not far to seek. In the present-day economic structure, there has been a fusion of the races of borrowers and lenders. The same man lends with one hand what he borrows with the other. The ruler of a civilized country is generally the single biggest borrower. He also lends large sums of money through State Banks : "Neither a borrower nor a lender be" has, therefore, become an outmoded maxim.

March 3, 1954.

Security for Loan

Once you have decided to be a borrower or a lender, you have to decide, whether the loan will be on personal security, or on the pledge or pawn of movable properties like ornaments, or on the mortgage of immovable property, as for instance, land or house.

For a loan on personal security or for pawn of movables, no form of writing is necessary. But it is safer for both parties, that the amount of the loan, and other terms of the transaction, such as the rate of interest, should be put down in writing. The Indian Evidence Act provides that where the terms of a transaction have been reduced to the form of a document, (for the purposes of the Act, a letter or several letters constitute a document), no evidence of the transaction will be admissible, other than the document itself. Once the document is proved, no evidence can be given for contradicting, varying, adding to or subtracting from the terms of the written document.

The rule is subject to certain well-defined exceptions. Because of the foolishness of the debtor, or the wiles of the creditor, it sometimes happens that the writing does not represent the real transaction. There is the story of a jagirdar, who borrowed a thousand rupees from a money-lender. The jagirdar was laboriously writing out, in figures, the amount of the loan in the document. The money-lender, who was looking over the shoulder of his victim, kept on saying "Huzur, your zeros are beautiful! Works of art!" Thus encouraged, the jagirdar put two extra zeros. The document showed a debt of one lac instead of one thousand. In these circumstances, the jagirdar will be allowed to challenge the document, though it is written and signed by him. This illustrates the nature of the exceptions.

The Promissory Note

There are various forms of writing which a loan transaction may take. The cheapest and simplest form of writing

is the promissory note. For a promissory note the maximum amount payable for stamp is four annas even when the amount advanced is rupees ten lac or more. For a bond, Government levies, by way of stamp, something in the region of twelve annas for every hundred rupees.

Borrowing on a promissory note is very common. Look at any five-rupee note or a ten-rupee note. You will see what a promissory note is. It reads: "I promise to pay the bearer on demand the sum of five rupees". It is signed by the Governor of the Reserve Bank of India, who, incidentally, is the most persistent and unashamed borrower in the country. You may borrow on a document in much the same form and be in good company. But you cannot borrow on a document, word for word the same. You cannot make your promissory note payable to bearer. The making of a note payable to bearer is the exclusive privilege of Government. If a private individual issues a bearer promissory note, he is not only subject to pains and penalties but the note itself is void. A private citizen makes his promissory note payable to "a certain person or his order." Therefore, if you write: "On demand I promise to pay to Hari or order the sum of rupees one hundred only", affix the requisite stamp, and sign your name on the stamp so as to cancel it, you become Hari's debtor for rupees one hundred and Hari becomes your creditor.

You will say the promissory note is silent about interest. Surely, Hari would expect some return on his investment. The law takes care of the creditor in that respect. A promissory note is a negotiable instrument and governed by the Negotiable Instruments Act. The Act itself provides that when no rate of interest is prescribed in an instrument falling under that Act, interest shall be calculated at six per cent per annum. When the rate of interest charged is more or less than six per cent, it is necessary to mention it in the note.

Rate of Interest to be Stated

In any other form of borrowing, it is necessary to state the rate of interest. If this is not done, the creditor has to seek the benefit of the Interest Act. Under that Act, he can recover interest at the current rate. Again, in order to entitle him to do so, the creditor has to make a demand in writing (when there is no specified date for payment) and interest runs from the date of the demand and not, as in the case of a promissory note, from the time it is made.

We have been discussing cases in which there is no stipulation for payment of interest. Now let us pass on to the other extreme, namely, cases in which the rate of interest is excessive. There is a statute called the Usurious Loans Act, which, in effect, provides that excessive interest cannot be recovered and, even, if already recovered, will be brought into account to the advantage of the debtor. The Hindu Law of Damduput also gives relief to a debtor. Under this rule, the amount of interest recoverable, at any one time, cannot exceed the principal. The rule is applicable when both the debtor and the creditor are Hindus. The rule is in force in the Bombay Presidency. It applies also in the town of Calcutta. It has been applied to the Santhal Parganas in Bihar. The religion of the Mohammedans prohibits the charging of interest on money lent, but there is nothing in any rule of law in India or Pakistan which prevents the payment or realisation of reasonable interest.

When the debtor signs a promissory note for rupees one hundred, he is normally entitled to receive from his creditor the full sum of rupees one hundred. This amount is called the consideration money. If the debtor is paid nothing at all, or less than rupees one hundred, then there is failure or want of consideration. For instance, if you make a promissory note in favour of Hari, post the promissory note to him and ask him to send you the amount loaned by money order, and Hari does not send you the money, or sends you rupees fifty only, he cannot recover anything from you in the for-

mer case, and not more than rupees fifty with interest in the latter case.

Lawful Consideration of a Loan

While we are on the subject of consideration it must be remembered that the consideration for a a loan must be lawful. If not, you fall foul of the Indian Contract Act. If you go to the races and win some money, you cannot recover the debt from the bookmaker by legal process. The transaction is immoral and opposed to public policy and, therefore, unlawful.

There is another form of debt, which thrives, without the blessings of the law. An agreement to pay money to the father or guardian of a girl, in consideration of his consent to the marriage of the girl, is void, as opposed to public policy. It has been so held by the High Courts of Bombay, Calcutta and Madras, but the High Court of Allahabad has been more hesitant. In their view, such a debt cannot be recovered only "where the parents of the girl are not seeking her welfare, but give her to a husband, otherwise ineligible, in consideration of a benefit to be secured to themselves. An agreement by which such benefit is secured is opposed to public policy".

It sometimes happens that a perfectly lawful debt for a perfectly lawful consideration cannot be recovered by reason of lapse of time. The Indian Limitation Act debars such recovery. The period of limitation in case of an unregistered promissory note or a debt secured by pledge of ornaments is normally three years. In the case of a mortgage, twelve years from the due date is the usual rule.

Pawn and Mortgage

The pawn of movables and mortgage of land are forms of loan favoured by a creditor. In the case of a pawn, the creditor is in the happy position of being able to realise his money out of court. He has the right to sell the pledged articles, after giving the debtor reasonable notice. If the

proceeds of the sale are less than the amount due, the pawner is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee has to pay the surplus to the pawner.

The rights under a mortgage of land are governed by the Transfer of Property Act. A mortgage is a tricky document, which a layman should not attempt to draft. It also requires registration under the Indian Registration Act. But in Bombay, Calcutta, Delhi and some other important commercial centres, a mortgage can be created by the deposit of the title deeds by a debtor to his creditor. The mortgagee's rights are, fundamentally, much the same as that of the pawnee, with the distinction that, except in a very limited number of cases, he has to go to court in order to realise the security. In a transaction, like a pledge or mortgage, the debtor giving adequate security, can get a lower rate of interest and generally better terms than on a promissory note without security.

The Agricultural Debtor

The agricultural debtor is an object of special protection under the law. The average Indian peasant is almost always in debt.

"His talk is of mortgaged bedding;
On his kine he borrows yet;
His heart is in his daughter's wedding;
In his eye fore-knowledge of debt".

Under the provisions of the Code of Civil Procedure where the judgement-debtor is an agriculturist, his house, implements of husbandry, cattle and seed are, within certain limits, exempt from attachment. Almost every State has legislated for the protection of the agriculturist against rapacious money-lending. The Bengal Money-lenders Act series and the Punjab Relief of Indebtedness Act are good examples. The following general principles, are accepted by all States :

(a) Money-lenders should be licensed, and, in case of misconduct, their licence should be revoked.

(b) There shall be a limit to the rate of interest charged and the charging of compound interest should be illegal.

(c) Snow-balling of loans—a process in course of which a loan for a hundred rupees becomes five hundred rupees in no time by yearly renewals—has been made impossible as, in proper cases, an old account can be re-opened.

Recovery From A Defaulting Debtor

Ordinarily, the remedy of a creditor against a defaulting debtor is to obtain a decree against him in court, realise the securities and proceed against the debtor personally for the balance. If the debt is an unsecured debt, there is no question of realising securities, and after obtaining his decree the creditor has to proceed personally against his debtor for the whole amount.

Under the Civil Procedure Code two remedies are available to the creditor. The arrest and detention in prison of the debtor is one. The court cannot, however, order the detention in prison of a woman in execution of a decree for payment of debt. A man can be detained in civil prison for a maximum period of six months. Imprisonment for debt has not been formally abolished, but in practice, the courts are reluctant to imprison a debtor unless he has been guilty of acts of bad faith or refuses to apply for relief under the insolvency laws. Every person detained in the Civil Prison is entitled to be paid a subsistence allowance, which comes out of the pocket of his creditor. If the subsistence allowance is not paid, the debtor is released.

The other remedy is attachment, or attachment and sale of property, of the debtor. Here too, the law is humane. The whole of the salary of a debtor, earning rupees one hundred or less, is exempt from attachment. If the salary is more, one-half of the excess can only be attached. The

necessary wearing apparel, cooking vessels, bed and bedding of a debtor cannot be attached. The fundamental idea is that a debtor is entitled to live and earn in order to pay his debts.

The last stage in the relation between a debtor and a creditor is when the debtor or the creditor dies. On the death of a creditor, his heirs become entitled to recover the debt much as the original creditor could. The position which arises, when the debtor dies, is more complicated. When the debtor leaves property sufficient to pay his debt, the heir of the debtor is under a legal obligation to pay it out of the property of the deceased. The heir is liable only to the extent of the asset inherited from the deceased. The heir is not personally liable to pay the debt of the deceased not even if he be a son, grandson or great-grandson of the debtor, though under the ancient Hindu Law the son, grandson or great-grandson of a deceased debtor was legally liable to pay the debts of the ancestor no matter whether they inherited any property from him or not.

THE LAW OF CONTRACT

GOPAL SWAROOP PATHAK

In modern society the law of contract governs human activity perhaps to a greater degree than any other branch of law. It provides a rule of action for even the most ordinary affairs in the daily life of the individual. When one goes to the market and buys an article at a grocer's shop, when a tradesman borrows money from a money-lender, when a passenger buys a railway ticket from the Railway and when a person guarantees the honesty of a clerk who seeks employment in an office, it is the law of contract which comes into play and governs the relations between the parties to all such transactions. As society advanced and human affairs became more complicated, the law concerning contracts developed, and we have today the laws of agency, sale of goods, banking, insurance and so on. I shall not deal with any problem peculiar to any particular branch of the law of contract. My intention is to discuss only the principles and general aspects of the law.

The law of contract consists of rules which impose limitations on human action. Subject to these rules it is open to the parties concerned to create rights and duties for themselves. If these rules are not infringed, parties who wish to enter into contracts enjoy the greatest freedom.

Essentials of an Agreement

The basis of a valid contract is an agreement between

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two or more persons. The first element of an agreement is the presence of a definite offer made either to a particular person or to the public at large. The next essential is acceptance of the offer. It may be accepted either by the particular person to whom the offer is made, or where the offer is made to the public, by an ascertained person or persons within the general public. The offer may be accepted either expressly by a statement to that effect or by conduct in the performance of the conditions laid down in the offer. A offers to sell his house for Rs. 10,000, B agrees to buy and to pay Rs. 10,000 for the house. Again a person who has lost his bag makes an offer by advertisement of a reward of Rs. 50 to anyone who finds the bag and brings it to him. B, after reading the advertisement, finds the bag and brings it to the owner. These are examples of offers made and accepted. An offer, however, is to be distinguished from an invitation for an offer. The issue of a price-list or a catalogue by a tradesman advertising goods for sale is not an offer but a mere invitation for an offer.

We have seen what an agreement is. Now, an agreement which is enforceable by law is known as a contract. All agreements are not contracts. Only such of them are contracts as create obligations which the law recognizes and the courts enforce. Every day agreements are made in domestic and social life which the parties do not intend to have legal consequences, that is to say, which do not create rights and duties for the enforcement of which the parties could go to court. If the parties have no intention to create legal obligations as distinguished from moral or social obligations, the law respects their wishes and does not impress upon such agreements the character of contracts. A familiar example of an agreement which is not intended to have legal consequences and which therefore cannot result in a contract is that of an invitation to dinner made by one friend to another who accepts the same. Such an agreement is not intended to create a legal duty and a legal right but merely results in a social obligation. It may be a gentleman's

agreement but as it was never intended by the parties that in case one of them is in default it will be the right of the other to go to a court of law, it does not become a contract and the court will not direct any of the parties to fulfil it or pay damages in case of breach of the agreement.

Requisites of a Contract

It is essential that the parties entering into a contract must possess the capacity to do so. A person who has not attained majority, *i.e.*, the age of 18 years or is not of sound mind is not competent to enter into a contract. In other words the law does not recognize a contract to which a minor or a person of unsound mind is a party. Thus, if a money-lender advances money to a minor, he is not entitled to recover the loan in a court of law. What is a sound mind for the purpose of entering into a contract has been defined by the Indian Contract Act. A person is said to be of sound mind if at the time when he makes the contract he is capable of understanding it and of forming a rational judgment as to its effects upon his interests.

Another essential requisite for the formation of a contract is that the parties enter into it with free consent, that is to say, not only should there be consent but consent should be voluntarily given. 'Consent' means that the parties to the contract agree to the same thing in the same sense. If the parties are thinking of different things at the time of entering into the agreement, their minds have never met upon the essential part of the agreement and therefore they cannot be said to have consented. In such a case the very basis of an agreement is wanting.

Free Consent

Under the law, 'consent' is said to be free when it has not been brought about by any of these five elements : coercion, undue influence, fraud, misrepresentation, or mistake.

There is always anxiety on the part of the law to protect the weak against the strong, the honest against the dishonest

and to uphold what is just. If the consent of a party to enter into a contract is obtained by the commission of a crime under the Indian Penal Code or the threat to commit such a crime or by unlawful detention of that person's property or the threat to detain it, consent will be caused by coercion and there can be no valid contract. It is obvious that the law could not uphold an agreement when the willingness of a party to enter into it has been obtained at the point of the pistol.

Even where force or threat of force has not been used, it may be possible for a person to acquire such power over the will of another that the latter may cease to have a free mind. The influence of one mind over another can be very subtle and such influence may be as pernicious as that brought about by the exercise of force or threat of force. Where a doctor acquires such an ascendancy over the mind of a patient, whose will has become weak by disease and long suffering, that he is able to exercise his influence on the patient and obtains an agreement for excessive fees which the patient would not have agreed to but for the exercise of such influence, then in the eye of law, the patient has not given free consent and the agreement would not be binding upon him. This is a case of undue influence.

Forms of Fraud

Fraud can assume many forms. The usual form is where one man causes another to act by representing something to him which he himself does not believe to be true. The active concealment of a fact by one having knowledge or belief of the fact also amounts to fraud. When a person buys goods promising to pay for them but without the intention of paying, he is guilty of fraud. Fraud is sometimes difficult to prove. But it has been said that "the state of a man's mind is as much a fact as the state of his digestion." However complicated the fraud may be it is always capable of proof.

The law treats innocent misrepresentation on the same footing as fraud. In the case of misrepresentation there is no intention to deceive but the result is the same as in the case of fraud. When a man makes a positive assertion about a fact which is not true though he believes it to be true, but his information is not adequate to justify that belief, it would be a case of misrepresentation.

"Void Contracts"

Parties whose consent has been obtained by coercion, fraud, or misrepresentation have the option to treat such contracts as void. Such agreements are not void from the beginning and unless the party concerned chooses to exercise the option, the contract remains good. They are known as voidable contracts, *i.e.*, contracts which can be made void at the option of one of the parties. Contracts which are void from the very beginning are known as "void contracts."

Mistakes of fact committed by both the parties, but not mistakes of law in force in India, will render the contract void. Where A agrees to buy from B a certain horse and both believe that the horse is alive while in fact it is dead at the date of the agreement, the contract is void. The reason is that at the time of entering into the agreement both the parties were under a common mistake with regard to the subject-matter of the contract. So far as mistakes of law are concerned, the position is different. Everyone is presumed to know the law. It is the duty of every citizen to know, either by his own effort or by taking professional advice, as much law as is necessary for the business he is conducting. For this reason, a mistake of law is not held to be an excuse and does not void a contract.

Consideration in a Transaction

Then there is the rule that an agreement without consideration is void. 'Consideration' is a technical expression which means an act of forbearance of one party, or the

promise thereof, as the price for which the promise of the other party is bought. To give an example when A agrees to sell his house to B for Rs. 10,000 and B agrees to buy it for the said sum the promise of A to sell the house is a consideration for the promise of B to pay Rs. 10,000. These promises on the part of A and B form the consideration for each other and together constitute an agreement. If B promises to pay A Rs. 10,000 for no consideration then under the above rule the agreement is void.

There are three exceptions to the rule. The first is that if an agreement is made on account of love and affection between near relations, it will be enforceable even though there is no consideration, provided the agreement is in writing and registered. Thus an agreement by a father to give his son a certain sum of money out of natural love and affection needs no consideration to make it a valid contract, but it is necessary that the agreement is put in writing and is registered. The second exception is the case where there is a promise to compensate for something done. To take an example, if A's purse is lost and B finds it and gives to A and A promises to pay some money to B, the promise is an enforceable agreement. The third exception is in favour of the agreement made by a debtor to pay a debt which by lapse of time cannot be recovered through court, provided the debtor has made the agreement in writing and has signed it.

Reprehensible Agreements

We now come to a class of agreements which the law considers as reprehensible and does not therefore recognize. The law disapproves of these in the interests of the safety of the State or of the public, or for other reasons connected with the social or economic welfare of the State or administration of justice. To this class belongs an agreement in restraint of marriage which the law has declared to be void. An agreement by a bachelor or spinster never to marry is bad. Law favours marriages and in the words of a learned

judge written long ago, an agreement in restraint of marriage "tends to depopulate", which he describes as "the greatest of all political sins."

Regard for the economic welfare of society is responsible for the rule that an agreement which hinders a person from carrying on trade or business or exercising a lawful profession is void. There is an exception to this rule in favour of the agreement not to carry on business of which goodwill is sold.

Agreements by way of wager are not enforced. Such transactions are in the nature of gambling. If A and B agree that A will pay money to B if an uncertain event happens and B will pay the money if that event does not happen, such an agreement is one by way of wager. Exception is however made in favour of certain prizes for horse-racing.

Unlawful Object Makes Agreement Void

In addition to specific prohibitions in the Indian Contract Act, there is a general prohibition that an agreement of which the object or consideration is unlawful is void. I will now give a few examples of such agreements. In excise laws, generally, the licensee is prohibited from sub-letting the licence without the permission of the Collector. If there is such a sub-lease and money has been deposited under it, the sub-lease is void and the money due cannot be recovered.

An agreement the object or consideration of which the court regards as immoral or against public policy is also void. By public policy is meant the policy of the State based upon social, political or economic grounds. It is said that no court can invent a new head of public policy and therefore public policy cannot be extended by courts beyond cases already covered by it. Whenever new cases arise, courts bring them within well-recognized heads. An agreement amounting to trading with an enemy during war is an example of an agreement against public policy. Such an agreement by a citizen would be detrimental to the inter-

ests of his own country. An agreement which has the tendency of disturbing the due administration of justice would also be against public policy. A well-known example of such an agreement is that which relates to stifling prosecution. A serious crime is committed and a person who is charged with the crime enters into an agreement with the complainant to pay a certain sum to the latter if the latter stops the prosecution. Courts abhor such agreements and proceed upon the view that if the accused person is innocent, the law is abused for the purpose of extortion and if he is guilty, the law is eluded by a corrupt promise.

The social interests of the state are injured by the sale of public offices. Agreements amounting to sale of public offices diminish the purity which must belong to such offices. For a similar reason, an agreement for assignment of public salary is bad. The object of the salary of a public officer is to uphold the dignity of the office and to enable the officer to carry on his duties in an efficient and proper manner.

An agreement that fraud will be practised and profits thus obtained will be divided among the parties to the agreement is also void. If property is let to a person for carrying on an immoral pursuit, the landlord cannot sue for rent, although, there is an agreement to pay it.

Quasi-contracts

I shall now deal with a class of transactions which, though not contracts, have all the legal incidents of contracts. They are known as quasi-contracts. There is no element of agreement present in such cases although all the legal consequences of contracts attach to them. The law of quasi-contracts is based upon the theory that there should be no unjust enrichment or unjust benefit and no person should be allowed to retain money or benefit derived from another which it is against conscience for him to keep. Now I shall give a few examples of quasi-contracts. When a person supplies necessaries to another person who has not the

capacity to enter into a contract, as for example a minor, the former is entitled to recover the value of the necessaries from the property of such incapable person. Necessaries mean food, clothing, lodging, medical attention and so on.

If a person enjoys the benefit of an act which has been done for him by another when the latter had no intention to do it gratis, the former is bound to compensate the latter and if the act consisted of delivery of a specific thing, to restore that thing.

A person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it. There are cases where one person is bound by law to pay and another person is interested in the payment. In such cases if the person liable does not pay and the person interested pays, the latter is entitled to recover the money so paid from the former. In all cases of quasi-contracts the law raises an obligation similar to that which is created by a contract because otherwise the party benefited will be unjustly enriched and it will be unfair for that party to enjoy the benefit and not to bear the burden.

THE LAW OF COPYRIGHT

B. N. LOKUR

'Copyright Reserved', 'World Copyright', 'All Rights Reserved'—these expressions stare at us when we open some books. The author purports to convey by these expressions a warning that no one shall deal with the book in a manner prejudicial to him. You would, naturally, not like that a book produced by you should be reproduced or republished by others : thereby the sale of your edition is affected and you suffer a monetary loss. The position would be worse if someone reproduces your book pretending himself to be its author : you then lose not only the price of your book but also the reputation of your authorship. Like damage would be done to you if anyone cleverly uses the main features of your book and produces a work closely resembling yours. It is the law of copyright that protects you from such harm being done to you and ensures that you alone shall enjoy the manifold fruits of your intellectual labours. In every literary work you produce, be it a big tome or be it a short article, the law confers upon you what is called 'copyright'.

Copyright is a bundle of several distinct rights. As owner of the copyright in your work, you have the exclusive right to produce or reproduce it in any material form whatsoever and also to make or publish any translation thereof ; if the work is a lecture, you alone have the right to deliver it in public; if it is a dramatic work, the sole right to perform it is yours ; the right to make gramophone records or cinema-

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tograph films from your work is also entirely vested in you. Any person who, without your authority, does anything to violate any of these rights, becomes answerable to you in damages and you may also prosecute him in a criminal court for infringement of copyright. Of course, if a person, working independently and without reference to your work, chances to obtain results identical with yours, he does not infringe your copyright. Piracy is the test of infringement of copyright.

"Thou shalt not steal" is the basis on which, as remarked by an eminent Judge, the law of copyright rests. It follows then that your work, to be entitled to copyright, should not have pirated from works of other authors and must possess originality—originality not in ideas or information, but in form, in expression, in presentation. For, what copyright protects is the method and the manner of communication of the idea and not the idea itself. Accordingly, you can safely borrow an idea from any work, however novel it may be, and re-state it in your own style. In the world of authors, plagiarism of ideas is indeed disparaged but the law of copyright takes no notice of it. Protection of ideas falls within the sphere of patent laws.

Literary and Artistic Works Protected

You acquire copyright the moment you produce or publish a work. In some countries, like the United States of America, acquisition of copyright is dependant upon compliance with certain formalities such as deposit of a specified number of copies of the work with the Copyright Office, registration of the work, payment of fees, display of the copyright notice and so on. But the Indian law prescribes no such formalities.

In copyright parlance, a literary work has a wide connotation and does not merely include writings possessing intrinsic literary value. Maps, charts, plans, tables and even matter-of-fact documents like telephone directories, railway time-tables, broadcasting programmes, tradesmen's catalo-

gues, press telegrams and examination papers enjoy copyright. However, advertisement slogans, race cards and like works drawn from a common source in entirety are not eligible to copyright protection. The rough and ready test is whether in the preparation of the work, the author has exercised any labour involving skill and judgment. It is imperative, however, that the works must be reduced to writing. Oral works have no claim to copyright. Accordingly, lectures, speeches and sermons, delivered extempore, howsoever high their literary merit, do not enjoy copyright protection.

Though literary works were the first to receive copyright protection, gradually other works also came to be enclosed within the precincts of copyright and today the protection extends to a variety of subjects which include dramatic, musical and artistic works. Likewise, the scope of the protection also is enlarged. Copyright does not now merely prevent multiplication of copies but also bars public performance. In the case of dramatic and musical works, it is the acting or performing right that is of real consequence and practical importance and what actually needs protection is the presentation of the dramatic action and of the musical tune.

Dumb shows, dances, pantomimes are also the subject matter of copyright, though they do not exist as literary works. Artistic works like paintings, drawings, sculptures, engravings, photographs and architectural works are also granted protection. You cannot make copies of these works without the authority of their author : you will be infringing copyright in these works even if you reproduce them in a different medium. For example, it is not permissible for you to make paintings or photographs of works of sculpture or of engravings and *vice versa*. Though the law of copyright covers a vast field, modern technical developments have stolen a march over it and broadcasting, television, micro-film processes and photo-lithography have created new situations. The possibility of simultaneous and effectual representation of sports events by televising them or by

broadcasting a running commentary on them has set new problems.

The Limitation

Though the object of copyright is to guarantee to the author the fullest possible harvest of his literary, dramatic, musical and artistic accomplishments, the law of copyright recognizes that it would hamper social intercourse and impede material as well as intellectual progress and prosperity of the community if under the guise of copyright the author is allowed 'to close all the avenues of research and scholarship and all frontiers of human knowledge'. Accordingly, certain essential limitations, are, in public interest, placed on the author's enjoyment of his copyright. The most important limitation is that any fair dealing with any work for the purposes of private study, research, criticism, review of newspaper summary does not constitute infringement of copyright.

You are thus entitled to copy out or extract from any work to any extent for your private reference or for the purpose of making a bona fide appreciation or evaluation of such work. Then again, there is no objection to your making and publishing paintings, drawings, engravings and photographs of any statue or other work of sculpture or artistic craftsmanship, if such statue or otherwise is permanently situated in a public place. You have also the liberty to paint, draw, engrave or photograph any architectural work of art. You may read or recite in public any reasonable extract from any work. You can select passages from various authors and, subject to certain limitations, even publish them in a collective form for use in schools. It would not be infringement of copyright if a newspaper publishes a report of a lecture of political nature delivered in public; it can also publish the report of any public lecture unless such report is prohibited by conspicuously written or printed notice displayed during the lecture. You may produce an abridgement or a synopsis of a work, provided, in so doing you do not merely copy out extracts from the work.

Any representation or reproduction of a work in private and domestic places is not prevented, even if you have invited a few friends to witness the performance. Then again, you remain on the right side of law, if you do not extract from any work a substantial part of it. Of course, what amounts to 'substantial part' is a matter for judgement and is bound to vary in each case ; it is possible in some cases that even a few quotations come within the mischief if they form the cream of the work. Law also forgives innocent infringement.

Ownership of Copyright

The question of ownership of copyright sometimes presents difficulties. As a general rule, the author of a work is the owner of the copyright therein. Nevertheless, in certain cases, copyright does not vest in the author. If, for example, you ask a photographer to take your photograph or if you ask a painter to draw your portrait—and if you pay for the order—copyright in the photograph or in the portrait belongs to you and not to the photographer or the painter. You have a right to take action against them if, against your will and without your consent, they publicly exhibit your photograph or your portrait. This is so in respect of all artistic works.

Then again, if you are an employee of some person and you produce a work in the course of such employment, the proprietor of the copyright in the work would be your employer—and not you. In newspapers, magazines, periodicals and like collective works, which are compilations of various distinct works, there is a twofold copyright : one is in the collecitve work taken as a whole and this vests in the editor of the collective work ; and the other is in each individual contribution compiled in the work and this belongs to the contributor. If, however, a contributor to a newspaper, magazine or a periodical is under a contract of service with the proprietors or publishers thereof, the copyright in his contribution passes on to those proprietors or

publishers and does not remain with the contributor. In such cases, the only right which the contributor possesses is the right to restrain publication of his contribution otherwise than in that newspaper, magazine or periodical. Copyright in works prepared or published by or under the direction or control of Government belongs to Government, the question whether the author of the work was in the employment of the Government under a contract of service being totally irrelevant.

The duration of copyright was at one time a matter of controversy. One view advocated perpetual rights on the analogy of rights to property while the other favoured a very short term. Though that controversy has now been settled by the adoption of the principle that the owner of copyright shall enjoy the protection for a sufficiently long period, there are still two divergent systems in the matter of computation of the term of copyright. Under the American system, copyright subsists for a specified number of years while the European system, which we are following, guarantees copyright for the life of the author and fifty years thereafter. The principle underlying the European system is obviously that the author must enjoy protection as long as he is living but if perchance death overcomes him immediately after he produces the work, the protection should survive for some time. In certain cases, however, a shorter term is prescribed. For example, Government publications, mechanical contrivances and photographs enjoy protection for a fixed period of fifty years only.

Detection of Infringement is Difficult

It is often difficult to detect infringement of copyright and at times it is even more difficult to bring the delinquent to book. Take, for example, a dramatic or musical piece. If it is reproduced in one corner of the country, the proprietor of copyright at another corner may not even know it and if at all he comes to know, he may not find it easy to vindicate his rights. However, the problem is to some

extent solved by the activities of "collecting societies" whose sole business is to enforce the rights of their members and patrons and collect fees and royalties for public performances of their works. Nevertheless, it seems necessary to have some speedy, summary procedure for enforcement of sundry breaches of copyright.

Copyright protection will not serve its purpose if it is confined to the national frontiers. Your work may be pirated abroad and you may be deprived on foreign soil of what the domestic law guarantees in your home country. International copyright is accordingly established by treaties and conventions between different States whereby the copyright of nationals of one State is respected in other participating States. The oldest multilateral convention, known as the Berne Convention, was signed nearly 60 years ago and more than forty nations have accepted it. Most of the American countries, however, have remained outside as their copyright system is different in many particulars but they have adopted a separate convention. International copyright position will not be satisfactory unless the two systems are reconciled and it is a matter of great solace that a Universal Copyright Convention was framed recently which bridges the gulf between the two groups.

Copyright, like other property, is both transferable and heritable. It is also divisible. The owner of copyright can assign it to others, wholly or partially, for the whole term of copyright or any part thereof. On the death of the owner, copyright devolves upon his natural heirs. The proprietor of the copyright has complete freedom to deal with the work in any way he pleases. He may produce any number of copies and editions, set any price on the work and may also withhold its circulation or reproduction. This perhaps is a weak spot in the law of copyright and it is therefore often said that the law of copyright creates monopolies and prevents easy dissemination of knowledge. But copyright does not establish monopoly of knowledge. You are at perfect liberty to make the fullest use of the information contained in a work. What copyright protects is your intellectual indi-

viduality. If physical objects created by your manual or mechanical labour deserve protection, is it not fair that the product of your intellectual labours—'the precious life-blood of the master-spirit'—should also enjoy some protection? If copyright is withdrawn, plagiarism will thrive, the original author will lose incentive, art and literature will not flourish; for, rare is the man 'who serves a greatness not his own, for neither praise nor pelf'.

MARRIAGE AND DIVORCE

N. C. CHATTERJEE

It is my privilege to-night to address you on a topic which is of great importance for the welfare and harmony of society and the progress of individuals. It is a happy coincidence that this topic is being discussed at a time when the Special Marriage Bill is before the Parliament and is engaging the attention of the country. You may remember that the Hindu Code Bill was on the legislative anvil for some years. It was sought to be made a comprehensive piece of legislation covering the major branches of Hindu Law. In 1941, a committee was formed by the Government with Shri B. N. Rau as Chairman to report on the desirability of codifying Hindu Law. The Committee recommended codification of Hindu Law in gradual stages. The final report of this Committee was published later. In 1947, the Hindu Code Bill was introduced in the Central Legislative Assembly. That Bill evoked considerable opposition in the country and also received support from influential quarters. Comment is often made when the legislature is asked to enact a Bill providing for drastic changes in respect of the personal law of only one community.

Under Article 44 of the Constitution of India it has been made a directive principle of State policy that the State shall endeavour to secure for the citizens, a uniform Civil Code throughout the territory of India. Although the supporters of the Hindu Code Bill wanted to have some kind of uniform

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law for the diverse sections of the community, yet there was considerable opposition because it introduced drastic or radical changes. After the Constitution was promulgated, it was pointed out in some quarters that if any attempt is to be made to effect changes there should not be any kind of communal legislation but legislation for all citizens of the Republic. There are obvious difficulties in the consummation of the desired objective having regard to the conflicting personal laws prevailing in the country.

Mr. Mayne, the celebrated author of the well known treatise on "Hindu Law and Usage", pointed out that Hindu Law has the oldest pedigree of any known system of jurisprudence and even now it shows no signs of decrepitude. It governs races of men extending from Kashmir to Cape Comorin. Mr. Mayne made some observations which are worth repeating : "The age of miracles has passed, and I hardly expect to see a code of Hindu Law which shall satisfy the trader and the agriculturist, the Punjabi, and the Bengalee, the pandits of Banaras and Rameswaram, of Amritsar and of Poona. But I can easily imagine a very beautiful and specious code, which should produce much more dissatisfaction and expense than the law as at present administered."

If there is difficulty in codifying Hindu Law for all classes and sections of Hindus, then it is not at all an easy task for producing a uniform Civil Code for Hindus, Muslims, Buddhists, Jains, Sikhs, Christians and Parsis and all the tribal and other people inhabiting this vast country.

Hindu Ideal Of Marriage

From the early Vedic times, marriage was a sacrament or *sanskar* essential for social order. The Hindu ideal of marriage is a fellowship between a man and a woman who seek to live creatively in a partnership for the realisation of the four great objects of life—*dharma, artha, kama,* and *moksha.* Monogamy was the approved rule though polygamy existed to some extent. In the Vedic literature,

the sanctity of the marriage tie was the accepted principle. Woman was held in high honour. She was said to be half of her husband and completed the man. In impressive verses, the great law-giver Manu exhorted men to honour and respect women. If I may quote the noble exhortation of Manu —"Where women are honoured, there the Gods are pleased; but where they are not honoured, no sacred rite yields any reward." It is a matter of regret that the injunctions of Manu have not always been respected. The Hindu ideal of marriage has always been that it is a holy union—a permanent and indissoluble union—for the purpose of religious duties.

In the great days of Hinduism, Hindu Law was not static and it progressed with the evolution of social ideals and was made to fit in with changing social needs. Under British rule, English judges adopted a very conservative attitude and they followed the *dharmasastras* and commentaries with a view not to offend religious susceptibilities. Hindu Law thus became petrified.

Although a marriage between Hindus is entirely a sacrament, the acceptance of the bride is an indispensable part of the ceremony. In a case before the Federal Court of India, Mr. Justice Mukerjee has held—"Even though marriage is a sacrament under the Hindu Law, acceptance of the bride by the bridegroom is an essential part of the ceremony, and a marriage would be invalid if the bridegroom was insane to such an extent that he was not capable of understanding the ceremony of accepting the bride and assenting to the marriage".

Remarriage of widows was permitted in the ancient times. According to Kautilya's 'Arthashastra', divorce could in some cases be obtained by the husband or wife, if they had married in the unapproved form. Kautilya's 'Arthashastra' also recognised remarriage of women in certain cases and under certain conditions. Manu, however, prescribed injunctions disapproving of divorce and remarriage, and such injunctions have ruled Hindu India for centuries.

In the early ages prohibitions against marriages within

the *gotra* or within certain degrees of kinship were not strictly enforced. Later on, marriage was held to be invalid if it was made between persons related to each other within prohibited degrees. Of course, such marriages are held to be valid if they are sanctioned by local custom. A man cannot marry a girl who is his *sapinda*. This rule is recognised both by the Dayabhaga and the Mitakshara schools of Hindu Law, although the two schools differ as to the enumeration of *sapindas*.

The main difficulty which progressive Hindus with a radical outlook felt was that marriages between persons belonging to different castes were held to be invalid unless there was a custom to the contrary. In a number of cases, marriages between persons of different castes were held to be void without distinguishing between *Anuloma* and *Pratiloma* marriages.

Anuloma marriage is one between a man and a woman of a lower caste. In some cases *Anuloma* marriage was held to be valid but not *Pratiloma* marriage which meant marriage between a male of a lower caste and a female of a higher caste. Persons who wanted to marry outside their caste could do so under the Special Marriage Act. That Act was passed in 1872 at the instance of the leader of the Brahmo Samaj. Under that Act, marriage is of a purely civil nature and could take place between persons, both of whom did not profess the Hindu, Buddhist, Sikh, Jain, Muhammedan, Christian and Parsi religions. In 1923 Dr. Gour's Act amended the Law of 1872. Under the Act, marriages may be celebrated before a Registrar between persons each of whom professes the Hindu, Buddhist, Sikh or Jain religion.

Under the Hindu Marriages Validity Act of 1949, it is provided that no marriage between Hindus shall be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belong to different religions, castes, sub-castes or sects. As regards marriages between sub-divisions of the same caste, they are regarded as valid even under the existing decisions. This Act thus validates inter-caste marriages.

The Special Marriage Bill

The Special Marriage Bill which was introduced in the Council of States by the Hon'ble the Law Minister, Mr. C. C. Biswas, makes an attempt to have some kind of uniform Civil Code regulating marriage and divorce. But this Bill is on a permissive basis. It is not a compulsory measure. It is entirely optional for citizens of India to marry according to the provisions of this Bill or to marry according to their personal law. This Bill provides for marriage between two persons irrespective of their religion, their caste and their community.

Under clause 4 of the Bill, as amended by the Joint Committee, conditions have been prescribed relating to the solemnisation of special marriages. Neither party must have a spouse living. Neither party must be an idiot or a lunatic. Parties must have completed the age of 18 years. If the boy or girl has not completed the age of 21 years, he or she must obtain the consent of his or her guardian to the marriage. Parties must not be within the degree of prohibited relationship.

Other provisions of the Bill reproduce the Special Marriage Act of 1872. One clause of the Bill has provoked considerable controversy, *viz.*, clause 19—'Effect of marriage on member of undivided family: The marriage solemnised under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jain religion shall be deemed to effect his severance from such family'.

The Joint Committee, I understand, have decided to retain this clause in its original form as suggested by the Law Minister.

Some leading Members of Parliament who were on the Select Committee are, we understand, opposed to this clause. They are not in favour of retaining this clause. According to them retention of this clause will, to a large extent, defeat the objects of the legislation. Suppose a Hindu who is a member of a joint faimly wants to marry a Hindu girl outside his own caste under the Special Marriage Law, would

it be fair to force the disruption of the coparcenary and compel that member to be governed by the Indian Succession Act which is primarily meant for persons other than Hindus and Muslims. It may also affect many Hindu joint family businesses. It is easy to say that severance from joint family does not prevent the parties from reuniting if they so desire. But as the law now stands it is not easy to effect such reunion.

Under the Special Marriage Bill, divorce will be permitted by a decree of court on the following grounds: adultery; desertion for three years; imprisonment for seven years; cruelty; insanity for not less than five years; leprosy; no trace for seven years or more; and non-compliance with a decree for restitution of conjugal rights for two years or more.

The wife can also get divorce on the ground that the husband has been guilty of rape, sodomy or bestiality.

Under clause 24 of the Bill any marriage solemnised under the Act shall be void—

(a) if the conditions prescribed for a valid marriage as mentioned in clause 4 are not fulfilled, or

(b) if the respondent was impotent at the time of marriage and at the time of the suit.

Naturally, the provisions with regard to divorce and the automatic disruption of the coparcenary would provoke considerable discussion. Although the Special Marriage Bill does not affect the fundamental sacramental nature of the marriage of the Hindus, it is generally criticised as attacking indirectly the basic concept of Hindu marriage and thereby seeking to disintegrate the fundamental basis of the Hindu social system. It is, however, to be remembered that divorce has not been unknown to Hindu Law and it is still sanctioned by usage in some parts of the country.

Among the Jat population of the Punjab, not only a widow, but a wife who has been deserted or put away by her husband, may marry again, and will have all the rights of a lawful wife. The same rule exists among the Lingayats of South Kanara. In Western India, the second marri-

age of a wife or widow (called *Pat* by the Maharattas, and *Natra* in Gujerat) is allowed among the lower castes. The right of divorce and second marriage has been repeatedly affirmed by the Bombay Courts. In Southern India, including Cochin and Travancore, the marriage of widows is not forbidden by either religious or caste custom to the majority of the population. The prohibition exists among the Brahmins, Kshatriyas and Vaisyas and also among the higher classes of Sudras who claim either equality or wear the sacred thread or who are otherwise high in the social scale or who emulate or follow Brahmin customs. In the absence of any custom permitting remarriage of widows, it was prohibited by Hindu Law. But since the Hindu widows' Remarriage Act (XV of 1856), it has become perfectly legal.

Matrimony in Mohammedan Law

Marriage in Mohammedan Law is not a sacrament but a civil contract. Although it is usually solemnised with recitation of certain verses from the Quran, yet Mohammedan Law does not positively prescribe any service peculiar to the occasion. The validity and operation of marriage are dependent upon the declaration or proposal of one party and the acceptance or consent of the other, and certain other formalities. Each sex has rights against the other. But, for psychological and social reasons, there are differences in the position of man and woman. Although a man is allowed to marry four wives, yet the rights and privileges granted to women by law do in a great measure check the man from doing so. Liberty is allowed to adult women to marry or not to marry a particular man. Option was reserved for the girl married by her guardian, other than the father or father's father during her infancy, to ratify or to repudiate the marriage contract immediately on her attaining puberty. Under an Act of 1939 all restrictions on the option of puberty (*Khyar-ul-bulugh*) in the case of a minor girl whose marriage had been arranged by a father or grandfather have been removed.

The greatest safeguard which a Muslim wife enjoys is the provision for dower in marriage contracts. The husband can, of his own act, divorce the wife under certain formalities against her will. In that case, the deferred dower becomes due and she has certain rights to residence and maintenance. The wife may refuse to live with her husband so long as the promised dower is not paid. Dower is recognised as a debt and if the dower is not paid the wife, and after her death her heirs, may sue for it. The widow has the right to retain possession of her husband's estate in lieu of dower.

The husband may divorce his wife whenever he desires without assigning any reason. *Talaq* may be oral or in writing. A marriage may be dissolved not only by *talaq* which is the arbitrary act of the husband but also by agreement between the husband and wife. A dissolution of marriage by agreement may take the form of *Khula*, which is divorce with the consent and at the instance of the wife, or *mubarat*, which takes place where both parties desire a separation. Under the Dissolution of Muslim Marriage Act which was passed in 1939, the following grounds of divorce are recognised: sentence of imprisonment on husband for seven years; absence of husband for four years; impotence of husband; insanity of husband; cruelty of husband; failure to provide for maintenance of wife for two years; failure to perform marital obligations for five years; any other ground recognised by Muslim Law. Before that Act was passed, apostasy from Islam of either party operated as a complete and immediate dissolution of marriage. Under that Act, mere renunciation of Islam by a married woman or her conversion to another religion did not by itself operate to dissolve her marriage, but she could sue for dissolution on the grounds mentioned in Section 2 of the Act. Apostasy from Islam of the husband still operates as a complete and immediate dissolution of the marriage.

Recognition by English Courts

The position and status of children who are born of persons married under the Hindu or Mohammedan Law or who were offspring of mixed marriages was very uncertain under the English Law. In some cases English courts refused to recognise the issue of a polygamous union as legitimate. It is now clear, that the English courts do, for many purposes, recognise polygamous unions contracted between persons domiciled in a country where polygamy is lawful. The Court of Appeal in England held that a Hindu marriage contracted in India between persons who were domiciled there, conferred upon the husband the status of a married man according to the law of his domicile, so that a woman whom he subsequently married at a registry office in England was entitled to petition the court for a declaration of nullity.

Before the Privileges Committee of the House of Lords, In Lord Sinha's Peerage Claims, Lord Maugham said: 'It cannot be doubted now (notwithstanding some earlier dicta by eminent judges) that a Hindu marriage between persons domiciled in India is recognised in our courts, that the issues are regarded as legitimate, and such issues can succeed to property in this country with a possible exception which will be referred to later.' The exception is dealt with in a subsequent remark, "Having regard to the domicile of the parties at the date when it was solemnised, the marriage would properly be treated as valid in this country for all purposes, except where it may be the inheritance of real estate before the Law of Property Act, 1925, or the devolution of entailed interests as equitable interests before or since that date, and some other exceptional cases." We may add that a Muslim marriage between persons domiciled in India or Pakistan would be similarly treated as valid by the English courts.

RULES OF THE ROAD

KANWAL KISHORE RAIZADA

This subject is a vast one, indeed. All States have framed their own and sometimes differing rules which they enforce within their jurisdiction, although the basis of them all is the Indian Motor Vehicles Act.

The Government of India has, however, taken the initiative by introducing the Indian Highway Safety Code.

Very briefly, the Indian Highway Safety Code is a manual of common sense and courtesy on the roads. Rules are being, and have been, enforced to bring about a certain amount of uniformity and order for the road users and the observance of these rules is of vital necessity as it otherwise leads frequently to accidents which not only cause material damage, but serious injuries and result in the death of many thousands of innocent persons every year in India and lakhs of persons throughout the world. Like all laws, these rules and regulations have been framed after carefully studying the causes of accidents and these rules must, therefore, not be taken as something which have to be reluctantly carried out or which may not really be necessary. There is always a reason behind every law and rule, particularly so of the roads, although it may not be apparent to us, and you may rest assured that all rules and regulations for the roads have been so framed as to safeguard our safety and that of our families and of every one who uses the roads.

March 31, 1954

I would like to impress upon all users of the road to remember that we all have responsibilities as well as rights when using the roads, whether as a motorist, or as a cyclist, or even as a pedestrian, but it should also be remembered that such rights should never be enforced. Discretion is always the better part of valour and if you find that the other person is in the wrong and is not giving way to you, or is disobeying any of the rules and regulations, or encroaching upon your rights, it would be wiser for you to give way to him and thus save yourselves from possible accidents.

As an illustration of the above, take the case of a motorist at night coming with full head lights from the opposite side and blinding you and other motorists. If you were driving a car towards him and you too put on your bright lights, he will also be blinded and this would probably lead to an accident to yourself and him and also possibly involve other persons. If, however, you do not blind him by using your bright lights but fail to slow down and draw up on the left side of the road, there is every chance that there is still going to be an accident as you will be blinded by the glare. Similarly, if you are going along a main road and another motorist comes out of a side road and crosses in front of you, it will be of little value to you to enforce your right of way by going straight ahead and thus getting into a collision with him.

Frankly, I feel that most of the accidents on the roads can be avoided by being careful and courteous and considerate towards other road users. Always allow for other people's mistakes as they may not all be as careful or courteous as you are and never relax your concentration. Under no circumstances try to retaliate: as a famous saying, now applied to road accidents, goes, "Two wrongs do not make a right—they only lead to an accident".

All motorists, cyclists and other vehicle drivers must learn and know the signals on the road and obey the traffic policeman or traffic lights as such signals are meant for everybody on the road and not for motorists alone.

Incidentally, the obeying of traffic signals applies equally to pedestrians and at certain places, even in India, very serious action is taken for the non-observance of traffic signals by pedestrians.

By the way, although it is a common practice to ask a policeman your way, you should never do so from a policeman on duty controlling traffic, as he is very busy and his attention must not be distracted from the important task of guiding traffic.

As you are perhaps aware, the majority of persons killed on the roads are small children and so, when using the roads, we must be very careful when we see children on the roads and particularly be cautious near stationary vehicles and wherever we see the sign of "School Ahead". If you have children of your own, you must teach them to use the roads safely and set an example by your own road conduct by strictly following the "Kerb Drill". You can get a copy of the "Kerb Drill" from any local Safety First Organization or the local transport authority.

I would now like to say a few words for the guidance of particular types of road users.

Where there is a pavement or footpath, use it. Do not step off it unless you are sure it is safe to do so. If there is a cycle track, do not walk on it. Leave it for the cyclists and they will leave the pavement for you. Never stand and talk with friends in the middle of the road, and particularly at corners. These are the most common places where you are likely to get hurt in spite of the motorists trying to avoid an accident.

Traffic signals are meant for pedestrians as well as for vehicular traffic. Observe them carefully.

Never run across the road and in particular never change your mind in the middle of the road. If anything unexpected happens, stop and stand on the road; do not confuse the motorist by shuttle-cocking backwards and forwards across the road.

Never step out from the front of or from the rear of any stationary vehicle as a driver on the road may not be

able to see you and may run into you. Always step on to the road from as far away as possible from a stationary vehicle.

Remember that the cyclist is often the cause or the victim of a majority of accidents on the road.

Whenever riding a bicycle, always signal your intentions clearly and make sure that the way is clear for you to turn even after you have signalled. Mere signalling of your intentions does not entitle you to cut across the road. Remember that most other forms of traffic are faster and heavier and less easy to control than your bicycle and you are the one most likely to suffer if by your carelessness you cause an accident.

Remember that a large number of accidents are caused by cyclists riding more than two abreast. This also causes obstruction to all traffic. Other vehicles which travel faster than you have the right to overtake you. In your own interests, do not carry anyone on the carrier or cross-bar of the bicycle. Remember that this causes your bicycle to be out of control as the load it is carrying is more than the margin allowed for by its manufacturers when fitting the brakes. As such, it is but natural to expect that your bicycle cannot stop as effectively and as quickly as it should, nor can there be effective control over it.

Never ride close behind a fast moving vehicle as it may stop suddenly and you are bound to hit into it. And never hold on to a moving motor vehicle. The motor vehicle may suddenly stop or swerve and this will result in a serious accident to you.

Take special care in wet weather. You may have dangerous accidents by skidding on the road surface and coming under a motor car or motor lorry. Also, always be careful when riding along tram lines.

Finally, always make sure that your machine is in good working order and particularly that:

(a) the saddle is of the right height for you; this is very important;

(b) the bell is in working condition;

(c) a lamp is used in the front of a bicycle at night;
(d) there is a red reflector on the rear mudguard;
(e) last and most important of all that your brakes are in perfect order.

Let me also request you not to do any trick or fancy riding while on the road. It may be clever, but it is dangerous. The proper place for such type of cycling is in a circus and not on the roads. In the circus, it will be appreciated, on the roads it will lead to an accident.

Motorists' and motor cyclists' attention is being drawn every year by the local Safety Organisations by holding competitions for testing the ability of drivers to drive at slow and constant speeds. A well known maxim is that a good driver is not a fast driver but a careful one and it is hoped that these competitions will bring this point home to the motorists.

A good driver drives on his engine and not on his brakes, and he must know how his vehicle will react in an emergency and he will be able to adjust his ability to the road and traffic conditions. He drives only as fast as he knows he can pull up safely within the distance he can see, which is clear and this is important particularly at night as distances are deceptive then and the area lighted up is very limited.

Driving should never be in a spirit of competition and if someone wants to overtake you, help him to do so by slowing down. Never accelerate when being overtaken.

When travelling in the hills, always give way to traffic coming down as such vehicles are more difficult to control.

Never turn or reverse your vehicle unless you are sure it is safe to do so.

Speed limits are imposed for reasons of safety and to exceed these limits is obviously illegal as well as dangerous.

Always have your brakes and steering checked up periodically, together with the other items of your car to ensure that they do not lead you into an accident or let you down at a crucial moment.

Always show consideration for other road users by

parking your vehicle in such a manner as would not cause obstruction to other road users, particularly by drawing up well to the left of the road. In particular, never park opposite another vehicle in a narrow street and never park near a corner.

And remember a very important rule of the road: at cross-roads and at all roundabouts, always give way to the traffic on your right. This, you will find, solves a lot of tangles and reduces accidents at cross-roads.

Always stop at the scene of an accident and report it if you are involved in it. In any case, it is your duty to give help to the injured.

I once again appeal to you all to show more courtesy and consideration while on the roads and keep the accident rate down. I wish you all a happy and safe journey walking, motor cycling or driving by car and request you to pin up the following motto on your vehicle:

"SAFETY FIRST — SAFETY ALWAYS"

CIVIC LAWS

NOOR-UD-DIN AHMED

Apart from Criminal Law, there are two sets of laws which govern the relationship between the people living in any State. One set of these laws governs the relationship between the State and the individual, the other set of laws regulates the relationship between the individuals themselves. The object of both these sets of laws is to achieve a well regulated and disciplined life amongst the people. Today, in this talk, we are concerned with the first set of laws classified under the term Civic Law.

At this stage of our evolution, no one will deny that it is absolutely necessary to have a large number of laws to regulate the relationship between the State and the individual. With the rapid growth of democracy during the last two centuries, it has become increasingly necessary, both in India and elsewhere, to define this relationship with precision and exactness, so that no doubt is left in the minds of those who constitute the State and of the individual, with regard to their rights and duties. Gone are the days when a State consisted of a large number of villages and a few towns spread over a comparatively small area, governed by a ruler with an army and a small body of advisers. Gone are the days when towns were ruled by Rajas and villages by Panchayats and headmen, and their civic life was controlled by unwritten laws and traditions which every

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April 7, 1954

one obeyed because these had been followed by their ancestors from time immemorial. Problems of making roads, providing street lighting and collecting taxes were settled, as they arose, by the people amongst themselves. Relationships between landlord and tenant, employer and the employees, capital and labour were also determined individually as and when they arose. There was no such complexity in all these matters as we have today, and these problems were settled comparatively satisfactorily by the goodwill of the people and the intimacy of relationship which existed between them. There was no sharp division between the ruler and the ruled. There was a greater difference in wealth but there was contentment based on common culture which made up for this inequality. There was no challenge by one to the very existence of the other. Perhaps, people needed less laws in those days because people were simpler and their needs fewer and also perhaps because they had more love for each other and were more law abiding. Today the State has grown into an impersonal entity, and the people have learnt to resist it. The function of law is, therefore, of far greater importance. It is no less than to provide rules and regulations by which this bitter struggle must be controlled, till both the State and the people learn to be considerate of each other.

Fundamental Rights

In our Constitution we have given strong recognition to this fact. There we have a set of fundamental rights each calculated to safeguard and protect the people against the encroachments of the State, at the same time placing restrictions on these rights in the interest of public order and morality. Here, we differ from the totalitarian conception of the State. We assure to the people certain rights of fundamental importance which we have learnt to value from our experience, but we also ensure to the State the observance of rules and regulations which the State must make from time to time in order to safeguard the health and growth of our common life.

Municipal Laws

Municipal laws play a very important part in this work of orderly progress and it is these we must briefly study to-day.

With the growth of cities and large towns it became necessary to form corporations, municipalities, and Town Area Committees in India. The object of forming these bodies was to take people more and more into the task of governing themselves and to place on their shoulders the responsibility of controlling their day to day affairs, to instil in them a spirit of co-operation and understanding of these problems. Perhaps the most important of these tasks was to preserve the health and sanitary life of the city, to build drains and sewers, to ensure the supply of clean water and pure food, to provide dispensaries. hospitals and health centres, to prevent the recurrence of epidemics and to take preventive measures against serious diseases such as malaria, cholera, small-pox and tuberculosis. For this purpose it was necessary to levy additional taxes, octroi duties and other cesses without which these tasks could not be accomplished. Apart from taxing the people, it was also necessary to pass health laws and to see that these were enforced with tolerable strictness.

Towns on Rational Basis

Next in importance to these health regulations and subsidiary to them, it was necessary to place their towns on a rational basis, to see that houses were built with enough provision for light and air, to see that enough vacant spaces were left to avoid congestion, to build parks where the old and young could go to play and breathe fresh air and for this purpose also it was necessary to pass a large number of building rules and by-laws, laws to acquire land and properties, and to demolish unhygienic and dangerous structures, without hardship to their owners and with their co-operation and understanding.

In addition to ensuring the health of the people, it became necessary to ensure their safety on the roads and in the streets. For this purpose it became necessary to pave the streets and to build roads, to make traffic rules and by-laws, in order to keep the pavement and roads free of hawkers and stall keepers who used these public places for the display of their goods and the planting of their wheel-barrows, causing no end of inconvenience and trouble to their fellow citizens.

Education naturally became the next concern of these municipal bodies. It became their duty to provide schools, libraries, adult and basic education centres and to provide free primary education. For these also it was necessary to pass a new set of rules and regulations and to see that these were enforced with reasonable strictness and popular support.

Regulation of Trades

In addition to these tasks of primary importance, there are many other tasks, such as regulation of trades, removal of nuisances, licensing of public conveyances and obnoxious industries which fall within the scope of municipal administration and for which rules and by-laws have to be made. Every now and then we hear of steps taken for the removal of some of these trades to selected areas outside the city and of removal of houses of ill fame to restricted areas. We read in newspapers about the prosecution of brothel keepers and prostitutes for infringement of these rules. We hear of the closing down of obnoxious trades in residential localities, and refusal by the municipal authorities to grant them licences to run these trades at night and in congested localities. All these rules, no doubt, cause annoyance to the few persons concerned but they are necessary for the good of the community as a whole, and for this reason need popular support.

In these and allied problems, municipal bodies have often to seek the assistance of the State Government and of

laws sometimes strictly outside the domain of municipal laws. But far more than State assistance and use of laws to achieve these commendable objects, the active co-operation and understanding of the people is necessary and for this purpose it is important that people must know their rights and duties in these matters, so that they can give their co-operation freely and willingly, without feeling frustrated and without thinking the State is invading their rights and interfering with their freedom.

Public Co-operation Necessary

It is an accepted fact that no restrictive laws will meet with success unless they have the active approval of the majority of the people. Amongst our people there is an attitude of lethargy and indifference towards the civic laws and very often active hostility is aroused by interested persons, leading to strikes, demonstrations, and sometimes law suits against their enforcement which cause no end of delay in the fulfilment of our tasks. If we have to have a healthy civic life, we must realise that along with privileges we have many duties. Just as the State has to provide us with good roads and well regulated traffic conditions, we must not crowd the roads with unauthorised structures and wheel barrows. We must have lights on our vehicles, and our cyclists must not go about without lamps after the lighting time. If we want hospitals, dispensaries and preventive measures we must see that contaminated and impure food is not sold and we do not throw garbage all over the street where flies and germs of disease may thrive. If we want schools and literacy centres, we must send our children to compulsory education schools. If we want noise free, clean, healthy and unobstructed surroundings, we must not use unlicensed loud speakers, should not clutter our parks with rubbish, walk on our lawns till they are bald, pluck flowers, or break railings and commit countless infringements which make civic life intolerable and yet go unpunished because

of our general indifference and ignorance of these most necessary rules and regulations.

Mild Punishment for Infringement

The punishment imposed by law for these infringements has naturally to be mild. Most of these offences are punished only with small fines. There are some offences such as running brothel houses and harmful trades which are punished with heavier fines and sometimes with imprisonment. There are municipal inspectors, and prosecutors, magistrates and courts who detect these offences and punish the offenders. They are more often abused and criticised but the only way to remove these blemishes is to understand and study these laws and to give our full co-operation in their enforcement. In addition to Municipal laws, there are other acts such as the newly introduced Weights and Measures Act, an Act against smoking in cinema houses, an Act for regulating the hours of work of trade employees and providing other amenities for them. Acts for regulating the hours of opening and closing shops, observing holidays and a multitude of other useful Acts which must be respected and observed by the citizen if he wants his communal life to be pleasant. We must not think that these are harsh laws. We must remember that our future as civilised people, in the new world which has grown around us during the last two centuries, depends on these laws and their due observance.

We have discussed the municipal laws and the rights and duties of the citizen under them at some length because they form the bulk of the laws bearing upon his responsibility as a good citizen. There are other laws which are equally important. For instance, there are laws which regulate the sale and consumption of liquor. Apart from providing revenue to the State, known as Excise Duty, these laws attempt to control and reduce the consumption and manufacture of alcohol. The success of these laws also very greatly depends on public co-operation. Similarly, acts

against gambling and wagering and for the control of lotteries and puzzle competitions require a highly developed sense of civic responsibility from the people. During the war and in the period of deficiency which followed, the State had to introduce a large number of Acts and ordinances for control of food supplies and other essential commodities. There were rationing orders and other control Acts such as Cotton Cloth and Yarn Control Order and a host of others, which undoubtedly interfered with the normal freedom of the people but were nonetheless necessary for maintenance of essential supplies and control of prices. All these, the good citizen obeyed willingly but the bad citizen thwarted and obstructed. Profiteering and black marketing, two of the most modern diseases of society, were the motive for their violation, and unfortunately they still continue, although with increased supplies and growth in food production the need for these Acts is fast disappearing. Shortage of housing accommodation led to further laws against charging excessive rents and taking premium for granting tenancy commonly known as "Pugree". While these laws controlled rents on the one hand, on the other, they punished greedy owners with fines and short terms of imprisonment. The procedure for the enforcement of all these Acts imposed a heavy burden on the tax-payer, and sometimes aroused resentment amongst the richer class of people, but on the whole it gave relief to the large number.

Corrupt Practices

Another evil which threatens to engulf our society at present is the manufacture of spurious articles of daily use and increasing infringement of trade and property marks. When spurious medicines and drugs are produced and sold under false trade marks, this practice becomes positively dangerous to human life and calls for exemplary punishment. Although the layman at first sight does not seem to realise that these offences are of such a serious nature, they have to be taken seriously and condemned by public

opinion, so that public confidence in what they buy can be restored. For the achievement of this goal, active public support is again necessary.

Lastly, eradication of bribery and corruption from public life is one of the most important problems of the present day. Strictly speaking, this does not fall within the realm of civic laws, but it is so closely allied to having an orderly civic life that it must be mentioned. Recently, our Parliament has amended the Penal Code as well as the Prevention of Corruption Act making the giving of illegal gratification a substantive offence. This means that a citizen giving a bribe or a reward to a public servant, himself commits an offence instead of only being guilty of abetment as previously. Punishment for these offences has also been enhanced from three years to seven years. Under the new law, only a Special Judge can try cases of misconduct by public servants.

Penal Provisions

A new presumption of guilt is created against the public servant found in possession of resources disproportionate to the known sources of his income and is in itself sufficient for his conviction. The trial has been made speedy by making the procedure simpler. It is now left to the citizen to bring the culprit to book by his honest co-operation in refusing to be victimised by the bribe taker and by giving assistance to the State in detecting and proving the crime. For this, again, a highly developed sense of civic duty is essential. There is no use condemning the practice in the press and from the public platform alone. Active participation by the individual is necessary. In order to do this we must learn to place public good above personal gain.

There are numerous other Acts with penal provisions which touch our daily life in its minutest details. They also require the support and co-operation of the citizen. It is impossible to mention all of them, or even a majority of them, in this brief talk. They deal with such diverse

subjects as the generation and use of electricity, factory legislation, land and sea customs, use of wireless, railways, prevention of obscene publications, slavery, laws relating to trade unions, treasure trove, preservation of ancient monuments, helping in census, controlling elections and a host of others. These must be studied by those who would become good citizens. One does not have to be a lawyer to know them but by understanding their implications one can avoid the conscious or unconscious commission of so many minor offences which do a great deal of harm to society.

THE SPEAKERS

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